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# *The law of the church*

Ethelred Luke Taunton

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# **THE LAW OF THE CHURCH**









Dilecto filio Ekelredo Rosentou Sacerdoti Thomomaykinepi  
 Apostolicum Nuntium ex unius imperium  
 Ruy AP. X

# THE LAW OF THE CHURCH

A CYCLOPAEDIA OF CANON LAW FOR  
ENGLISH-SPEAKING COUNTRIES

BY

ETHELRED TAUNTON

PRIEST OF THE ARCHDIOCESE OF WESTMINSTER

Tu regere imperio populos, Romane, memento;  
Hæc tibi erunt artes; pacisque imponere morem,  
Parcere subiectis, et debellare superbos.

AENEIDOS lib. vi.

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## INTRODUCTION

**LAW and life are correlative terms. As God is the Author of life, so is He the Author of law : ' By Me kings reign, and lawgivers decree just things ' (Prov. viii. 15). This general truth is particularly seen in that Divine society, the mystical Body of Jesus Christ, which is quickened by the ever abiding presence of the Holy Ghost, Himself the Lord and Life-giver.**

From the earliest days of the Church, law has existed as essential to her existence. The keys of the kingdom, symbols of power, were of old given to one who was bidden to confirm his brethren and to feed the flock. This charge to Blessed Peter was not only to teach infallibly, but also to govern with Divine authority the Church over which he was set as head. Thus, we see him, after the Ascension, standing up in the midst of the disciples and presiding over the election of Matthias, who was numbered with the eleven. The Prince of the Apostles exercised jurisdiction by that first sermon on the Day of Pentecost when he preached ' Jesus of Nazareth, a Man approved of God ' as ' both Lord and Christ ; ' and he opened the Church by baptism on that same day to ' about three thousand souls.'

The Petrine privileges are for all time. They are bestowed for the Church, not for the individual man. They were instituted for us in this twentieth century as well as for the first followers of Christ's Name. Hence the Vatican Council, following those of Lyons and Florence, decreed that the Pope as successor of St. Peter has ordinary and immediate jurisdiction throughout the whole Church.

From the Day of Pentecost till now the successors of Blessed Peter, as Vicars of Christ, have been the divinely appointed lawgivers in the Church. Judgment has been locked up in their hearts, and the law has been sought from their lips. From the Holy See, as from a new Sion, has gone forth the law that rules the people of God. Peter has never failed his brethren, he has always risen to the occasion ; and his judgments stand because they are based upon truth and mercy. ' Peter is no recluse,'



says Newman in an eloquent passage, 'no abstracted student, no dreamer about the past, no doter upon the dead and gone, no projector of the visionary. Peter for eighteen hundred years has lived in the world; he has seen all fortunes, he has encountered all adversaries, he has shaped himself for all emergencies. If there ever was a power on earth who had an eye for the time, who confined himself to the practical, and has been happy in his anticipation, whose words have been deeds and whose commands prophecies, such is he in the history of ages who sits from generation to generation in the Chair of the Apostles as the Vicar of Christ and the Doctor of the Church.'

As the life of the Church is marked by a perpetual growth and development down the course of the ages, ever changing, never altering, so is the history of her law. Each new phase of life requires a new manifestation of law. Popes have watched the times, and have directed the current of legislation towards the need. Whether in the Catacombs, in the Lateran, or close by the Tomb of the Fisherman, or whether at Lyons, Avignon, or at other places where the Pontiffs tarried, there were they in the place of their jurisdiction; and there have they set forth decrees to the whole Christian world.

It may be fairly said that no country has contributed more to the formation of the *Corpus Iuris Canonici* than England; for, as no country was so closely united to the Holy See as ours, so to none came more decretals in reply to questions submitted by English bishops to their supreme head.

The growth of the Church's law has been one of natural progress. Like all true development, as Newman has taught us, it bears the marks which differentiate it from corruption. Thus, there has always been the preservation of the type, a continuity of principles, an assimilative power, a logical sequence, an anticipation of the future, and a conservative action on the past. Such was, indeed, to be expected from the very nature of the Church, indefectible and infallible. But there is a difference between the Church as a teacher and the Church as a ruler. The deposit of Pentecost, once given, can never be added to; the Church, in its head and in its members, is endowed with a Divine assistance in ever bearing witness to 'the truth as it is in Jesus.' On one hand, if she has to deal with never changing truth, she has also to govern changeful man; hence her discipline and her practical ruling must be adapted to the necessities of the time. While the principles that guide her in ruling are permanent (for they

are based on the eternal laws of justice), the application will vary according to the exigencies of time, person, and place. The four cardinal virtues of prudence, justice, fortitude, and temperance, necessary in a lawgiver, are abundantly shown in the history of the legislation of the Church. Thus, the mediæval relations of the Papacy with the State were based upon principles that were, in themselves and at that time, most true, most just, and most wise. If as regards the modern State there be no longer room for these same relations to the same extent, it is because differences of time and place no longer make them feasible and advantageous for either side. Whether secular Governments have done well in rejecting the moderating action of the Holy See is a question which the years are solving in no doubtful way. It may, however, be remarked that modern thought is directly tending towards a recognition of the value of the Papacy as the great moral force in the world, and the steady representative of an ideal opposed to might and materialism. *Non licet, Non possumus* are valuable correctives for the waywardness of humanity.

As an example of the adaptability of the Church's law to the needs of the time, the history of her discipline as regards Holy Communion is valuable. Holy Communion, it must be remembered, was instituted in the presence of the apostles only, not in that of the disciples. As far as the Gospel narrative goes, we can gather that the gift was instituted for the apostles only. As they received power to 'Do this,' so they were told to 'Take and eat.' From the Gospels we get no hint that other believers, such as the seventy-two disciples and the holy women, were to share in the gift. It was by the ruling of the Church that on one hand the faithful were admitted to Communion and made to share in the 'Take and eat,' while the other part of the Paschal Institution, the 'Do this,' was restricted to the apostles themselves and to those whom they associated in the ruling of the flock. The point to be noted is that the Church legislated in a practical manner about so important a part of the spiritual life as Holy Communion. As she extended the gift to all the faithful, so she regulated the way in which it should be received. From the Acts of the Apostles, it seems to be clear that in the earliest ages of the Church, the faithful, who persevered in the breaking of bread, received under one kind only. Benedict XIV. points out that among the early followers of Christ were Nazarenes, who were bound by vow to abstain from wine (*De Sacrosancto Missæ Sacrificio*, Lib. II. cap. 22). Later on, it appears, from the Pauline Epistles, that either

kind was received. And it is perfectly clear from the evidence of antiquity that Communion under one kind was very general in the first centuries of the Church's existence. In the days of Pope Leo and Pope Gelasius the Manichees at Rome, while holding that wine was an emanation from the Evil One, were able, under the prevailing discipline of receiving under either or both kinds, to disguise their heresy and receive Communion at Catholic altars by availing themselves at mass of the privilege of receiving the Body and Blood of the Lord under the form of Bread only, passing the Cup of Salvation. The Popes called attention to the danger; and it may be presumed that the practice of receiving in both kinds became a test of orthodoxy. Gradually as the need ceased the practice of the Church changed; and Western countries, some at one time and some at another, reverted to the more ancient and convenient practice which exists to-day. In England the practice of receiving Holy Communion under both kinds, evidently introduced from Rome, does not seem to have disappeared entirely until, perhaps, the first half of the fourteenth century. The Councils of Constance, Bale, and Trent legislated on the subject and made law the guardian of dogma. Finally, Pius IV. was induced to grant the use of the chalice to Bohemia, but Pius V. and Gregory XIV. finally withdrew it.

The canon law, then, has grown with the Church, and has been subjected to the same influence that has governed her existence. It has been theology in practice. It is just as impossible to conceive the Church without dogma as without law. The one is, as it were, the will, and the other the intellect, of the mystical Body of Christ.

It is not my purpose in this Introduction to give a sketch of that vastly tempting subject, the history of the canon law, nor to trace its growth and its various founts. The doctrine of the Apostles, the constitutions and canons of the Popes and Fathers of the Church, the ancient collections of decretals, the penitentiaries, the Gallican forged decretals, the more methodical collections of the tenth and twelfth centuries, and the authorised and formal collections of decretals which constitute the *Corpus Iuris Canonici*, these are mentioned in the following pages. But as the object of this book is practical, it may as well be pointed out here that, whatever interest and value the other founts of canon law have, one only—that is to say, the Pope—is of supreme practical weight; for he alone, as the divinely instituted lawgiver of the Church, can add force and efficacy to the work of others. He

alone can bind and loose. Therefore, in this sense, the Pope is, and may be said to be, the sole fount of law.

As this book is written for the practical use of English-speaking Catholics, it may be well to point out briefly how, in a peculiar way, England had her law, as well as her faith, directly from Rome. As regards the British Church, it is enough to refer at Arles to the British bishops in 347, who wrote, with the other bishops, 'to the most beloved Pope Sylvester, who controls the mightier Sees at those places where daily the Apostles hold session ;' and, at Sardica, where they agreed that reports should be sent regularly to the Roman Pontiff ; and in Britain itself where the prelates of Britain in 453 changed their Easter, 'with Pope Leo, Bishop of Rome.' From these and many other sources it is clear that the British Church recognised in the See of Peter the highest legislative as well as dogmatic power.

Coming to Saxon times, Bede the Venerable tells how Gregory (who had drunk so deeply of the spirit of the great monastic law-giver, Benedict, the founder of the one Roman Order) sent the prior of his monastery of St. Andrew to convert England, and bade him be 'ordained archbishop of the English nation' by the Papal vicar, Virgilius of Arles. With the Roman faith came the Roman law. When consecrated, Augustine sent Lawrence, the priest, and Peter, the monk, to Rome with a request for legal decisions on certain points of discipline and liturgy. The reply of Gregory to the nine questions put by Augustine is the foundation of the particular canon law of this country. Gregory sent also the Pall, and conferred on Augustine metropolitan jurisdiction over the British bishops, 'that the unlearned may be taught, the weak strengthened by persuasion, and the perverse corrected by authority.' Not one but several letters of legal decisions came, at that time, from Rome ; and thither, after the death of Augustine, went Mellitus 'to confer with Pope Boniface about the necessary affairs of the English Church.'

The history of the Pall in England is the history of the Roman canon law ; and the pages of our early chronicles bear testimony to the rule of the Holy See. Thus, when Theodore of Tarsus in Cilicia came from Rome as Archbishop of Canterbury, Hadrian, 'experienced in monastical and ecclesiastical discipline,' was sent with him lest, 'according to the custom of the Greeks,' he should introduce novelties. The archbishop's visitation and synods were of lasting effect, and their influence is felt to-day ; and it was the Roman Church law that brought about the unity of England in the times

of the Heptarchy. The collection of canons used in Rome was introduced at the Council of Hertford in 673; and in less than a hundred years after Egbert of York (767) wrote his dialogue on ecclesiastical institutions, the first English work on canon law.

Not only did archbishops go to Rome for the pall, but legates from the Holy See were frequent, and they brought law along with them. For instance, the Anglo-Saxon Chronicle says (A.D. 785): 'At this time messengers were sent from Rome by Pope Hadrian to England to renew the faith and the peace which St. Gregory had sent us by Augustine the bishop, and they were worshipfully received and sent away in peace.' These were Gregory of Ostia and Theophylactus sent by Pope Hadrian. At Cealchythe and elsewhere they held councils and made many constitutions. This frequent intercourse with the Holy See preserved England in the Roman law, so that Æthelard of Canterbury in a synod (796) could say: 'I do command . . . as I am enjoined to do by Pope Leo, that henceforth none of the lay folk do presumptuously dare to choose themselves lords over God's heritage; but that all things belonging to God's holy ministers remain inviolate, without gainsaying, according to what is contained in the charter granted by the Pope or ordained by the holy men that were our fathers and teachers. If there be any men who refuse to keep this commandment of God and of our Pope and of us, and despise and set it at naught, let them know that they shall give an account thereof before God's Judgment Seat.'

Among the many other traces of the Roman law in action in the Anglo-Saxon Church, two cases may be mentioned. In 1047, Edward sent two bishops to a Roman council after a preparatory synod had been held in London at mid-Lent; and in 1048, when Robert of Canterbury returned with his pall, he refused to consecrate Abbat Sparhavoc, who had the King's writ and seal, saying that the Pope had forbidden him.

How our Anglo-Saxon fathers, at the time of the Conquest, loved and defended the laws and customs of Rome the following incident may tell.

Down West at Glastonbury, once the home of St. Dunstan, a weird scene was enacted. Thurstan, a Norman abbat, had been thrust upon the house. He despised all Englishry. 'This shameless abbat, attempting to compel the monks of Glastonbury to give up the chant which had been introduced into England by the disciples of the Blessed Pope Gregory, and to adopt the chant of



the Flemings or Normans, which they had never learned or heard before, a violent tumult arose, which ended in a disgrace to the holy order.' So says Vitalis. Florence of Worcester adds that the new chant which Thurstan wished to introduce was that of William of Fécamp. How the matter sped when the abbat brought in armed men to coerce his monks is thus told in the Chronicles :

'Then were the monks sore afeard of them, and wist not what to do, and fled hither and thither. And some went into the church, and locked the door after them; and they [the soldiers] went after them into the minster, and would drag them out for that they durst not go out. And a rueful thing there happened that day; for the Frenchmen brake into the choir, and shot towards the altar where the monks were, and some of the knights went up to the up-floor and shot downwards with arrows towards the halidom, so that on the rood that stood above the altar stuck on many arrows. And the wretched monks lay about the altar, and some crept under it and cried with yearning to God, craving His mildness, for that they could get no mildness from men. What may we say but that they shot sorely, and that others brake down the doors there, and went in and slew some of the monks to death and many wounded therein, so that the blood came from the altar upon the gress, and from the gress upon the floor. Three were slain to death, and eighteen were wounded.'

With the Normans under Lanfranc, the whilom legist of Pavia, there began a reversal of the former union between Church and State. The control of the Holy See became more immediate as the Church became more independent of the State both in legislation and jurisdiction. No longer were the Church councils a mixed assemblage of clerics and lay folk; the spiritual courts were separated entirely from the temporal. Canon law was then becoming throughout the Church more systematised. The intellectual movement, which found its expression and instrument in universities, moulded and fashioned law into one whole. The tendency of the early Middle Ages was towards unity in everything. A perpetual synthesis was at work, and analysis was forgotten as the preliminary to an entirely successful synthesis. Howbeit, the tendency of thought in every department of life was towards unity; and the canon law was submitted to the same principle. What had been scattered here and there was now collected; and Englishmen, in close connection with the Continent, did excellent work. Amongst the early English legists of the Middle Ages are the

following : Gilbert, who in 1201 or 1202 brought out the *Breviarium* and glossed it ; Alan, a professor at Bologna, who in 1208 made a new collection called the *Apparatus* ; Richard, also a professor at Bologna, then passing through the Bishopric of Chichester, Sarum, finally dying as (1228) Bishop of Durham, who wrote his *Ordo Iudicarius*, a gloss on the Decretals, and another work, *Casus Decretalium*. After the legatine councils held by the Romans Otho (1236) and Ottoboni (1268), *regnante Henrico Tertio*, their constitutions received a famous and much used commentary from John Acton or Ayton, a canon of Lincoln (d. 1350). There is in Corpus Christi Library at Cambridge the manuscript of a work, *Summa Iustitiæ*, which also is ascribed to Acton. Other less known English canonists are Richard Adagonista (c. 1210) ; William de Montibus ; William of Drogheda, who wrote his *Summa* about 1239 ; Robert Capitonus, who wrote (1253) the *Dicta Theologica* ; Nicholas of Lyra, an English Franciscan (c. 1320) ; Richard of Nottingham, professor at Oxford (1329) ; Richard of Hampoole (1349) ; John de Burgh, Chancellor of Cambridge in 1385, who wrote a very popular treatise, the *Pupilla Oculi* ; and Nicholas Gorham, who died at Paris about the beginning of the fifteenth century.

But prince among all English canonists was William Lyndewood, official, or vicar-general, of the primatial See of Canterbury. He, some time in 1423, began his *Provinciale* or treatise on the provincial laws of England from the time of Langton to Chichele, to whom as 'Primate of all England and Legate of the Apostolic See' he dedicates his work. The *Provinciale*, which Mr. Maitland, in his excellent *Roman Canon Law in the Church of England*, justly says, 'has been often cited, often lauded, sometimes read,' has for its object to explain, by means of the common law of the Church, the particular law contained in the provincial legislation. Local laws almost always are only reinforcements and special applications of common laws. This is but natural ; for as canon law is cosmopolitan in its nature, and emanates from one supreme legislator, either immediately by decree or decretal, or indirectly by consent and approbation, so the work of canonists, foreigners or English, whatever be their nationality, is simply to accept and interpret papal decrees. In the days of Lyndewood there was no such thing, there could be no such thing, except in mere details, as national Church law opposed to the Roman canon law. Never in his wildest dreams did it ever occur to any English canonist to dispute the force of any decree that emanated from the Holy

See. Mr. Maitland says : ' I have been unable to find any passage in which either John of Ayton [Acton] or Lyndewood denies, disputes, or even debates the binding force of any decretal.'

Lyndewood's is a remarkable case in point, if we remember the temper of the times in which he wrote. The Council of Constance was just over and the dispute between Martin V. and Archbishop Chichele was proceeding. In spite of the domestic difficulties that pressed sorely especially upon his own archbishop, Lyndewood is simply a 'papist' of the highest views. Thus he holds that a general council can only be held by the authority of the Holy See ; that the Pope is above a general council, '*Quia Papa est supra iura*,' and is one '*qui non subiacit legibus*.' To Lyndewood any papal decretal is of the same value as any of the decrees he could find when turning over the parchments of the manuscripts in his law library.

In the *Provinciale* every point in the provincial decrees is tried by the test-stone of conformity with Roman law. Once more to quote Mr. Maitland, Lyndewood's position 'is that of a lawyer who is commenting on the edicts issued by a non-sovereign legislator. He has to consider whether and how they can be harmonised with a large body of law which that legislator has no power to repeal or to override. The archbishop may make for his province statutes that are merely declaratory of the *ius commune* of the Church, statutes which recalled to memory, statutes which amplify it and give it a sharper edge. He may supplement the papal legislation ; but he has no power to derogate from, to say nothing of abrogating, the laws made by his superior.'

To show how the legal mind of Lyndewood only reflected the views of canon law held by four representative bishops of the English Church, the following instances are at hand :

'I know, and truly do I know,' says Grosseteste, 'that there is in the Lord Pope and the Holy Roman Church this power : that he can freely ordain about all ecclesiastical benefices.'

At the Council of Lyons, Peckham said : 'Those whom Peter binds with the chains of his laws are bound also in the palace of the highest and heavenly Ruler.'

Arundel, in his constitutions against the Lollards, says : 'Let no one presume to dispute of things determined by the Church (as they are contained in the decrees, decretals, or provincial constitutions and synodals of places), either publicly or privately, unless it be to get at the true meaning of them ; nor call in question the authority of the said decrees, decretals, or constitutions,

or the authority of him that made them, or preach contrary to their determination. . . . Let him who asserts, teaches, preaches, or pertinaciously intimates the contrary, incur the penalties of heresy and of a relapse into the consequences thereof, and be sentenced as such to all the effects of the law ; unless he do penance in manner and form elsewhere by us appointed and abjure as it is there provided.'

Facts are more eloquent than words. The 'blissful martyr,' St. Thomas of Canterbury, laid down his life for the canon law as the safeguard of the liberty of the Church.

And in the face of history twenty-three royal commissioners, amongst whom was one with the honoured name of William Stubbs, late Bishop of Oxford, in their report on the Ecclesiastical Courts Commission assert that 'the canon law of Rome, although always regarded as of great authority in England, was not held to be binding on the Courts.' Had these twenty-three commissioners meant that in some points the civil power in England took no cognisance of the Pope's law, well and good. There were, undoubtedly, cases of conflict in the border land between the spiritual and the temporal. But if they mean, what they evidently did mean, viz. that in the Courts Christian the common canon law was not held to be binding, they forgot the Council of Merton (1236), where, on the question of legitimating, by subsequent marriage, offspring born out of wedlock, the spirituality under St. Edmund stood by the common canon law against the temporality who cried, '*Nolumus mutare leges Angliæ.*' Did the bishops yield to the clamour, or did they continue, to the Reformation, to hold and, in practice, to acknowledge the canon law on this point even as we do to this day ?

The law of the Church, then, obtained in England until Henry VIII. made himself, by the authority of Parliament, supreme head on earth of the Church of England. The divinely appointed keystone of the arch was taken away, and, the King taking the place of the Pope, the building of a thousand years came to ruin. Parliament—and Parliament is a strange body, forsooth, to settle matters spiritual or ecclesiastical—took into its own hands the Divine power of ruling the Church of God, and essayed in the place of Blessed Peter to feed the flock.

With the Pope went the law ; for what remained had only parliamentary sanction, and thence became but so many civil laws applied to ecclesiastical purposes. The faculty of canon law ceased to exist at Oxford ; and this was one of the immediate results of

the suppression of the monasteries. William Hoskyns in 1535 was the last at that time to take a degree in England. When Pole, the legate, came, the canon law returned for a while. But God's providence saw further than did man. On that 17th of November 1558, when Mary Tudor lay a-dying at St. James's Palace, the Cardinal at Lambeth was breathing his last. The fortunes of the Church in England looked indeed desperate. But from those two death-chambers, separated by the river rushing towards the sea, the Church of God in our land, when all hope seemed lost, went forth despoiled, humbled, crushed, but free. The outward trappings, the revenues and names, were left to the parliamentary Church which still wears, more or less gratefully, the chains of the State that made her. God's Church, though despoiled, was henceforth to be free from all secular interference. While all was done to destroy her, while misguided men tried to rivet on her once more the thralldom of the secular power, she has been, and is to-day, a standing example of a Church free in that liberty which comes only from a complete union with the Holy See. Those faithful men and women, clergy and laity, who in penal days gave their lives, as did no other nation, for defence of the Papal Supremacy, now see the reward in the liberty that the Church enjoys in all English-speaking lands.

But during those sorry times the common law lapsed ; although its principles, as far as possible, were invoked in the temporary expedients that were devised for the welfare of the *pusillus grex*. As the wintry storm spent its fury and the hope of spring came, Pius IX. reintroduced its observance when he brought in again an episcopal hierarchy. If, in a few specified instances, the Holy See allowed certain exceptions to the law, it was made clear that such were only granted because in all respects the common law could not *statim* be observed. Hence, at the First Westminster Provincial Council, the fathers declared that, as the dioceses had to be ruled according to canon law, so that subject must be diligently studied. The Church in England must develop according to her normal life, which is that of law ; but it is for the Holy See to decide when circumstances may call for a change in a legislation which has been approved of by her supreme authority.

The Church's work must be done in the Church's way : otherwise where there is no law, there is no vision, no prophet. Moreover, as Santi says, the Church abhors all arbitrary ruling. She pre-serves to everyone his rights and the freedom with which Christ



has made him free. Rome, ever marked by an imperial instinct for ruling, lives by justice, which is, and must be, the very breath of her nostrils. Her principality over some three hundred millions of men could not, humanly speaking, be sustained for a day, were it not that her children know that the Pontiff's throne is girt about with justice even as it is founded on truth.

A word as to the purpose of this book. My aim has been throughout to provide a practical work upon the canon law with special reference to English-speaking countries. Questions which more directly concern dogma, liturgy, morals, and ceremonial are passed over; also all questions concerning regulars, except where they come into contact directly or indirectly with the episcopal authority. Much of this book may be found in the many volumes of the *Bibliotheca Canonica, Iuridica, Moralis, Theologica necnon Ascetica, Polemica, Rubristica, Historica* of Ferraris, a work which, appearing first about the middle of the eighteenth century, has received so many additions from various hands that, so to say, it has become difficult to see the wood on account of the trees. I have also put most of the later and modern-day writers under direct contribution; I have also attempted to keep pace with the latest decisions. It is also well to point out clearly that I first treat of the Common Law on each point; and then give the particular Law which sometimes will be found to modify the former. It is quite likely that, in a book treating of so many subjects, errors—not grave ones, I hope—may have crept in unwittingly. I shall be truly grateful if those competent for the task will point them out to me, so that they may receive attention should other editions be wanted. The work has been cheerfully submitted to two strict revisions by independent censors; and everything has been done to secure an exact Roman spirit throughout the pages.

A book should be judged by its purpose; and it is useless to look in its pages for what is beyond its scope, at least as this is conceived by the writer. Hence I may say of this book:

Res non verba damus: fructus, non pagina frondes  
Profert. Si cupis has, deteriora cupis.

It remains now for me to express my grateful thanks to friends whose kindness has put at my service their time, patience, and sound judgment. I should like especially to mention Dom John Gilbert Dolan, of the English Benedictine Congregation, who has been so kind as to act as *Censor deputatus*: his suggestions,

many and wise, have been most willingly accepted. My thanks are also due in a special way to the Rev. W. W. Hume for some aid in the bibliography, and to several other friends who have helped me with suggestions and encouragement. It is also a pleasure to add my sincere acknowledgments of the great assistance which both the publishers and printers have given me during the time that the book has been in the press. It has been a difficult work to carry through, and they have begrudged neither labour nor trouble.

It now remains to offer respectfully this book, the first work, as far as I know, on the canon law from an English pen since the days of Lyndewood, to the service of the bishop and clergy of English-speaking countries. It has been written for their practical use ; and I venture to hope that it may give an impulse to the deeper study of canon law in English-speaking countries. Those who wish to follow up more closely any given subject, will find in the Bibliography a list of the approved authors.

Writing these lines beneath the shadow of that glorious dome that hangs over the tomb of Blessed Peter, I submit *ex animo* this, as well as all my other works, to the supreme judgment of Holy Mother Church. Beforehand I reject everything that She may reject ; I will correct anything that She may judge requires correction. For She is the pillar and ground of the Truth ; and her word is life and law.

ETHELRED TAUNTON.

November 5, 1905.  
PIAZZA POLI 42,  
ROME.



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# THE LAW OF THE CHURCH

## ABBAT

1. Abbat signifies 'Father,' and is a title given to the ruler of an abbey.

2. Abbats are of two kinds: Secular and Regular.

3. *Secular abbats* are those who hold ecclesiastical benefices (*q.v.*) with the abbatial title. They are of four kinds:

(1) Those who have both jurisdiction (*q.v.*) and the right of *pontificalia*.

(2) Those who have only the abbatial dignity without jurisdiction or *pontificalia*.

(3) Those who have, in certain cathedral churches, the first dignity and privilege (*q.v.*) of precedence by reason of some suppressed or destroyed collegiate church or of some conventual church now become the cathedral.

(4) Those who hold abbeys *in commendam*, and not *in titulo*, and so neither use the abbatial dress nor exercise *pontificalia*.

4. *Regular abbats* are real prelates as the name is understood in the sacred canons.

5. They are of three kinds:

(1) Those who have regular subjects and a territory over which they exercise quasi-episcopal jurisdiction. They are also called *abbates nullius diocesis*.

(2) Those who have regular subjects but no proper territory: *e.g.* the ordinary Benedictine abbats and those of the Lateran Congregation of Canons Regular.

(3) Those who are abbats in name only, *i.e.* *titular abbats*. These have *in actu* no subjects belonging to the monastery whence they derive their title.

6. Abbats must be elected by secret vote. See ELECTION. By common law the election is for life; but by privilege certain congregations elect their abbats for a term of years.

Trent,  
Sess. 25,  
cap. 6, *d. r.*

## 7. Abbats may be blessed or not blessed.

S.C.R.  
6 Dec.  
1631

Eugenius  
IV. in  
1436 for  
St. Justina  
of Padua,  
and St.  
Pius V. in  
1566 for  
the  
Canons  
Regular

(1) Those who seek for the solemn blessing prescribed in the *Pontificale* must receive it from a bishop and not from other abbats.

(2) The blessing is not *in se* essential; and abbats, who by custom (*q.v.*) or privilege are not blessed, can exercise their order and office without it, and can freely and lawfully do all things which other abbats can do.

(3) Hence an abbat elected and confirmed by apostolical authority, but not yet blessed, is not styled 'abbat elect.' Once blessed, an abbat, when translated from a monastery which has not the rights of *pontificalia* to one that has, needs no other blessing.

S.C.R.  
25 Feb.  
1601

(4) But by common law (*q.v.*) abbats are now bound to seek for the blessing. Benedict XIII., by a Constitution dated 1725, orders, under pain of suspension (*q.v.*), abbats within a year of their election to receive or, at least, to ask three times for the blessing from the diocesan bishop or from the metropolitan. If the petition be refused for the third time the abbat is free to call in any bishop in union with the Holy See.

(5) In England, by the recent Constitution *Diu quidem est* (1899), the abbats *regiminis*—i.e. those exercising actual jurisdiction over existing monasteries, after election—are confirmed by Apostolic authority by the Abbat President of the English Congregation, and are bound within six months of their election to present themselves to the diocesan bishop to be blessed by Apostolical authority; and, if he be prevented, they can receive the blessing from any Catholic bishop.

8. Abbats are exempted from the ordinary jurisdiction of the diocesan bishop,<sup>1</sup> and cannot be excommunicated by his ordinary power. As abbatial exemption is prejudicial to bishops, it is therefore, as *odiosa*, to be interpreted strictly. On the other hand, a custom (*q.v.*) of one hundred years must be pleaded against exemption on account of the prejudice to the Roman See.

9. For a full account of abbatial power within the monastery the rules, constitutions, and privileges of each order and congregation must be taken into consideration. But as far as the abbatial power touches upon the episcopal office, we must note the following as recognised by law :

<sup>1</sup> In England before the Reformation almost all the great Benedictine abbeys, save some five or six houses, were under the jurisdiction of the diocesan bishops, who confirmed the abbat elected and deposed him when necessary. These abbeys were subjected to a twofold visitation (*q.v.*), the bishop's and the congregation's.

(1) Abbats who are priests can give the first tonsure and the four minor orders,<sup>1</sup> but only to their own regular subjects. Trent. Sess. 23, cap. 10, d. r.

(2) They cannot, therefore, ordain other regulars even with the leave of their prelates or seculars with the consent of the diocesan bishop.

(3) They cannot grant letters dimissorial (*q.v.*), and incur suspension by giving or receiving them.

(4) Abbats with quasi-episcopal jurisdiction can hold synods and appoint synodal examiners (*q.v.*) for the parochial *concursum*.

(5) They can bless vestments and consecrate altars and chalices for their own subjects.

10. As regards the rights of *pontificalia*,<sup>2</sup> Alexander VII. by a decree of the S.C.R. (September 27, 1659) allows abbats, only when celebrating pontifically, to have a movable throne on two steps and a simple canopy. He forbids the use of the seventh candle, and orders the pastoral staff to be used with a white pendant veil. He also limits the days on which an abbat may pontificate to three days in the year. But the Cassinese Congregation have retained their ancient privileges, which have since the days of Alexander VII. been extended to other congregations, *e.g.* to the English congregation, whereby many of the above restrictions are done away with. A recent decree of the S.C.R. (June 13, 1902) has regulated in accordance with former legislation the rights of the abbats of the English Congregation to *pontificalia*. According to this decree the English abbats can celebrate pontifically not only in their own abbatial churches, but also without the leave of the diocesan bishop in all other churches served by their monks with cure of souls. They can also give leave to other abbats of their congregation to pontificate in their churches. They can use the prelatial dress, *i.e.* rochet, *mozzetta* and *mantelletta*, outside their own churches.

11. Abbats *nullius diocesis*, or with quasi-episcopal jurisdiction, have *de iure* a decisive vote in provincial councils, and subscribe to the decrees. They have also a right to assist at general councils.

<sup>1</sup> Innocent VIII. in 1489 is said to have given to the abbat of Citeaux, and to four other abbats of the order, and to their successors, the power of ordaining their subjects deacons.

<sup>2</sup> It is uncertain when abbats first began to use *pontificalia*. The abbey of Bobbio claims a constitution of Pope Theodore (643) confirming a grant of Honorius I. to the abbat. But we are on surer ground in the eleventh century. In England the abbat of St. Augustine's, Canterbury, received the grant first in 1063; and the abbat of St. Albans nearly one hundred years afterwards. It became quite general; and Henry VIII., the new Supreme Head, licensed his new abbat of Bisham to wear a mitre like any other abbat of the order.

Abbats *regiminis* are by custom invited to provincial councils, and have a consultive voice.

12. Abbats of a congregation take precedence according to the date of their election. It would seem that abbats should take order congregationally according to the date of the foundation of their congregations.

### ABBESSES

Cf. Trent,  
Sess. 25,  
cap. 7, *de*  
*reg. et*  
*mon.*

1. No nun can be elected to the office of abbess or prioress unless she has completed her fortieth year of age and the eighth year of her religious profession. But 'should no one be found in the same convent with these qualifications, one may be elected out of another convent of the same order. But if the superior who presides over the election shall deem even this an inconvenience, with the consent of the bishop or other superior, there may be chosen one from amongst those in the same convent who are beyond their thirtieth year, and have since their profession passed at least five of those years in an upright manner.'

*Ibid.*

2. 'But no one shall be set over two convents; and if anyone is, in any way, in possession of two or more, she shall, retaining one, be compelled to resign the rest within six months; but after that period, if she have not resigned, they shall be all *ipso facto* vacant.'

*Ibid.*

3. The election (*q.v.*) is by secret vote; and should the voting be not secret, whether by ignorance of the law or not, the election is null and void. 'And he who presides at the election, whether it be the bishop or other superior, shall not enter the enclosure of the monastery, but shall listen to or receive the votes of each at the grille. In other particulars the constitution of each order or convent shall be observed.'

*Ibid.*

4. It is forbidden without Apostolic dispensation to elect one illegitimate by birth; corrupted; or having suffered public penance (unless it were only salutary); a widow; blind; deaf; or one of three sisters alive at the time in the same convent. No one can vote for herself.

5. All nuns of the monastery professed for the choir have, *de iure communi*, an active voice. But by particular law some constitutions only allow it to those who have been professed for a certain number of years. In every case the Council of Trent in the above-quoted decree requires that the particular constitutions should be observed.

6. In the case of a nun who is prevented by sickness from

attending the chapter, she can use her right of voting. The one presiding over the election sends two prudent nuns to ask for her vote ; they bring it to him. She can send it either by word of mouth or written and sealed.

7. Where lay sisters have the right to vote, their privilege is to be observed.

8. The election is valid when there is a majority for one candidate, unless the constitutions require more than the bare majority.

9. The bishop or the one presiding has no vote, not even a casting vote. Should the community be unable to agree upon any candidate, the bishop can appoint a superior for a certain time, during which they may come to an agreement. But when this period has passed without any election being made, then the bishop, or other superior, can nominate the one whom he judges to be the most fit, and depute her as abbess.

S.C.E.R.  
5 March,  
1619 ; and  
S.C.C.  
23 May,  
1621  
S.C.C.  
22 Oct.  
1592

10. By a law of Gregory XIII., which applies to Italy only, abbesses are elected for three years only, and then have to vacate the office for three years, during which period they cannot be elected even as vicars. But by particular law, contained in various constitutions, the office is generally for life.

11. In case of nuns who are under the jurisdiction of regular prelates, these are bound to inform the diocesan bishop of the day and time of election, so that, if he wish, he or his representative may be present. If he do not wish to be present, the election can proceed. The bishop or his vicar cannot take a secretary or notary with him ; nor can he receive the votes of the nuns ; nor can he before the election persuade or hear or question the nuns about the election ; nor can he confirm the election. In other words, he cannot in any way interfere with the rights of the regular prelate.

S.C.C.  
4 May,  
1675

12. The election should be proclaimed at once by signifying the number of votes, so that in case of a dispute an immediate opportunity be afforded for checking the votes.

13. An abbess duly elected and confirmed can be blessed with the solemn benediction given in the *Pontificale*. The blessing belongs to the diocesan bishop.

14. As an abbess is incapable of spiritual jurisdiction (*q.v.*), she cannot commute or dispense the vows of her subjects ; but she can irritate their vows (*q.v.*), as this belongs to the ruling power she has over her nuns, *e.g.* as a mother over her daughters. It is held that, by reason of the vow of obedience, the

will of the nun is, in all things lawful, subjected to the will of the abbess or superioress.

15. An abbess can command her subjects 'in virtue of holy obedience,' and thus bind them in conscience. This is the common opinion. But she must be careful that the obedience she demands be in accordance with the rule and constitutions.

16. She cannot, properly speaking, dispense her nuns as regards regular and ecclesiastical observances; but she can only do so by the leave of her prelate, or by declaring that, 'here and now,' the precept ceases to bind.

17. She cannot publicly bless her nuns, but she can bless them in the way that a parent blesses her children.

18. She cannot preach, but, in chapter, she can exhort her nuns by conferences &c.

19. By the Apostolical Constitution of Leo XIII., *Quemadmodum* (December 17, 1896), abbesses or other superiors are not allowed 'to endeavour, directly or indirectly, by command, counsel, fear, threats, or blandishments, to induce their subjects to make to them' 'the secret manifestations of conscience (*q.v.*) in whatsoever manner or under what name soever.'

20. By the same decree the Pope declares that permission or prohibition as to Holy Communion 'belongs solely to the ordinary or extraordinary confessor, the superiors having no right whatever to interfere in the matter, save only the case in which any one of their subjects had given scandal to the community' since her 'last confession, or had been guilty of some grievous public fault, and this only until the guilty one had once more received the sacrament of penance.' If the abbess thinks she has just and serious reasons for opposing frequent Communion in the case of an individual nun, she is bound to make them known to the confessor, in whose judgment she must absolutely acquiesce.

*Ibid.*

## ABBREVIATIONS

1. In rescripts, especially in those emanating from the Apostolic Penitentiary (*q.v.*), there are certain customary abbreviations made use of. The following is a list of some of the more usual forms :

ABBREVIATION	MEANING	ABBREVIATION	MEANING
<i>Absoluo.</i>	Absolutio	<i>Archiepus.</i>	Archiepiscopus
<i>Alr.</i>	Aliter	<i>Aucte.</i>	Auctoritate
<i>Aplica.</i>	Apostolica	<i>Canice.</i>	Canonicæ
<i>Appatis.</i>	Approbatiss	<i>Card.</i>	Cardinalis

ABBREVIATION	MEANING	ABBREVIATION	MEANING
<i>Cens.</i>	Censuris	<i>Nultus.</i>	Nullatenus
<i>Circumpeone.</i>	Circumspectione	<i>Ordinaoni.</i>	Ordinationi
<i>Coione.</i>	Communione	<i>Ordio.</i>	Ordinario
<i>Confeone.</i>	Confessione	<i>Pbr.</i>	Presbyter
<i>Consciae.</i>	Conscientiae	<i>Penia.</i>	Poenitentia
<i>Const<sup>us</sup>.</i>	Constitutionibus	<i>Peniaria.</i>	Poenitentiaria
<i>Discreoni.</i>	Discretioni	<i>Pntium.</i>	Praesentium
<i>Dispensao.</i>	Dispensatio	<i>Poe.</i>	Posse
<i>Dnus.</i>	Dominus	<i>Pontus.</i>	Pontificatus
<i>Ecclae.</i>	Ecclesiae	<i>PP.</i>	Papa
<i>Ecclis.</i>	Ecclesiasticis	<i>Pr.</i>	Pater
<i>Effum.</i>	Effectum	<i>Pror.</i>	Procurator
<i>Epus.</i>	Episcopus	<i>Ptur.</i>	Praefertur
<i>Excoe.</i>	Excommunicatione	<i>Ptus.</i>	Praefatus
<i>Exit.</i>	Existit	<i>Qd.</i>	Quod
<i>Fr.</i>	Frater	<i>Qmlbt.</i>	Quomodolibet
<i>Frum.</i>	Fratrum	<i>Qtnus.</i>	Quatenus
<i>Gnalis.</i>	Generalis	<i>Relione.</i>	Religione
<i>Humil.</i>	Humiliter	<i>Rlari.</i>	Regulari
<i>Humoi.</i>	Huiusmodi	<i>Roma.</i>	Romana
<i>Igr.</i>	Igitur	<i>Salri.</i>	Salutari
<i>Infraptum.</i>	Infrascriptum	<i>Snia.</i>	Sententia
<i>Intropta.</i>	Introscripta	<i>Sntae., Stae.</i>	Sanctae
<i>Irregulte.</i>	Irregularitate	<i>Spealer.</i>	Specialiter
<i>Lia.</i>	Licentia	<i>Spuali<sup>bus</sup>.</i>	Spiritualibus
<i>Litma.</i>	Legitima	<i>Supplioni<sup>bus</sup>.</i>	Supplicationibus
<i>Lre.</i>	Litterae	<i>Thia., Theolia.</i>	Theologia
<i>Lte.</i>	Licite	<i>Tli.</i>	Tituli
<i>Magro.</i>	Magistro	<i>Tm.</i>	Tantum
<i>Mir.</i>	Misericorditer	<i>Tn.</i>	Tamen
<i>Miraone.</i>	Miseratione	<i>Venebli.</i>	Venerabili
<i>Mrimonium.</i>	Matrimonium	<i>Vrae.</i>	Vestrae

### ABSENCE

1. No one can be judged or condemned during his absence unless he has been proved to be guilty of contumacy (*q.v.*).

2. Everything done during the absence of a defendant who is not contumacious is null and void. There must be due citation (*q.v.*).

### ABSOLUTION

1. Absolution may be taken in two ways: (1) As the freeing from the bond of sin; (2) as the loosening from censure (*q.v.*).



Here we are only concerned with absolution in the second sense. For its sacramental sense *see under* PENANCE.

2. Censures are taken away only by absolution in either the inner or the outer *forum*.

3. As regards the *minister* of Absolution, the general principle is: Only those who have the necessary jurisdiction (*q.v.*) can absolve, according to the axiom: 'Only he can absolve who can condemn.' This jurisdiction is either ordinary or delegate.

4. In cases of censure *ab homine lata* by particular sentence or *per modum praecepti*, also in cases of reserved censure *a iure lata*, only he who passed the sentence, or his successor, or his superior, or his delegate, can absolve.

(1) Hence a vicar capitular (*q.v.*) can absolve the censures passed by the ordinary power of the late bishop.

(2) The Pope, as universal superior, can always remove the censures inflicted by a bishop.

(3) The metropolitan can only absolve such censures when on visitation (*q.v.*) or on appeal (*q.v.*).

(4) Nuncios Apostolic cannot absolve those bound by the censures of lower prelates except on appeal.

5. In cases of censure passed *a iure communi* or *ab homine* by a general sentence, if these censures be not reserved, any approved confessor may absolve.

6. As regards censures reserved to the Pope, it must be noted that these are of three kinds:

(1) Censures simply reserved.

(2) Censures reserved in a special manner.

(3) Censures reserved in the most special manner.

7. As regards censures *simply* reserved, by common law, formulated in the Council of Trent, a bishop, or his vicar general, can *in foro interno* absolve from these when the crime is hidden, or when it has not been brought before a legal tribunal. An exception is made for the case of wilful murder; and, furthermore, only the bishop himself can absolve in a case of hidden heresy. As regards the other two classes of censures reserved to the Pope, a bishop, by his ordinary power, cannot absolve.

8. But by particular law the bishops who have Propaganda faculties (*q.v.*) have the power of absolving not only from censures simply reserved to the Pope, but also from those reserved in a special manner. The four cases reserved in the most special manner to the Roman Pontiff are not included in these faculties, though one of them, the one absolving from censures and

Sess. 24,  
cap. 6,  
d. r.

ecclesiastical penalties of a confessor who dares to absolve his partner *in peccato turpi*, is sometimes given in a limited way and under special conditions. The bishops who have these faculties can communicate them to the confessors of their dioceses.

9. Any priest, even if he have no approbation (*q.v.*), or if he be under excommunication (*q.v.*), or degradation, or under irregularity (*q.v.*), or in apostasy (*q.v.*), can, if there be no other confessor present, absolve any of the faithful *in articulo mortis* from every reserved case, whether with or without censure. He can also absolve in the likely danger of death, according to the more probable opinion. But if an approved confessor be present, and he is ready to receive the confession, it is more probable that an unapproved priest cannot absolve; for, as Abbas says: 'When some faculty is granted on account of necessity, the grant only lasts as long as the necessity.'

Barbosa,  
*De Offic.  
et Potest.  
Epis.* P. II.  
Alleg. 25,  
n. 81

In *Cap.  
Cum  
Venerabilis* de  
Consuetudine in fin.

10. Absolution given *extra articulum mortis* by a priest not approved, and not having the necessary jurisdiction, is null and void.

Trent,  
Sess. 23,  
cap. 15,  
d. 7.

11. As regards *the subject*, absolution can only be given to those who are under the actual jurisdiction of the absolver. Hence no one can absolve himself. Moreover, absolution can only be given (1) to him who asks for it; (2) provided that he has purged his contumacy; (3) has repaired the scandal; (4) and has satisfied, or at least has promised to satisfy, the injured party; and (5) lastly, if his crime has been one of the more serious, provided that he has sworn never to fall into that fault again.

12. As regards the *form of absolution*, this can be valid in any words or sign that clearly express the intention. Hence the presence of the delinquent is not necessary; neither is confession *pro foro interno* unless the faculty of absolving contains the clause *audita confessione*. But the formulas prescribed should be used; viz. for the external *forum* that which is found in the *Rituale Romanum*; for the internal *forum*, this or a similar formula: 'Ego te absolvo a vinculo excommunicationis [suspensionis, &c.] quam incurristi propter [e.g.] haeresim et restituo te sacramentis Ecclesiae et communioni fidelium [executioni tuorum ordinum, officiorum, beneficiorum, *if in a case of suspension*], in nomine Patris et Filii et Spiritus Sancti.' If the absolution be given by papal delegated power, the following words should precede the above formula: 'Auctoritate omnipotentis Dei, SS. Apostolorum Petri et Pauli et Sanctissimi Domini Nostri N.N. in hac parte tibi concessa et mihi commissa, absolvo te, &c.'

13. Absolution can be given either absolutely or conditionally. It is also given *ad cautelam* in all rescripts, bulls, and apostolical privileges, lest the effects of the concession be impeded by some hidden censure. Lastly, absolution given *ad reincidentiam* immediately takes effect; but if the penitent, within a certain time, does not do something prescribed he at once incurs *ipso iure* a censure of the same kind as that from which he has just been absolved. He who takes away the censure can appose the *reincidentia*. To-day there is no such thing as *reincidentia a iure*, but only *ab homine*.

14. Finally, absolution must be a free act, and granted with knowledge of the circumstances; and *in foro externo* it can be given for one censure only, leaving other censures unabsolved.

### ABUSE

1. An abuse presupposes use; and to abuse is, strictly speaking, to turn any thing or person to another purpose than that for which it is intended.

2. A privilege merits to be wholly lost when it is abused.

3. An abuse cannot be sustained by argument when it is opposed to right reason, decency, or honesty.

4. In removing abuses care must be taken only to employ canonical remedies.

5. Bishops must also be sure that the practice under consideration is really an abuse.

### ABUSE OF POWER

1. The abuse of power concerns acts of jurisdiction, especially when they interfere with the rights of others.

2. There are five ways in which this abuse may take place:

(1) When anyone arrogates to himself jurisdiction over the subjects of another.

(2) When anyone extends his jurisdiction over matters which do not concern him.

(3) When a superior, who is not the immediate superior, brings before his tribunal, without a cause approved of by the canons, a case which should be judged immediately by the inferior judge of first instance.

(4) When superiors without a sufficient cause unjustly take away and restrain the rights of their subjects.

(5) When any *new grievance* is imposed upon subjects without sufficient cause.

3. The following are examples of abuses of power :

(1) If a bishop ordain or excommunicate one who is not his subject.

(2) If a bishop by his own authority judge merely secular business.

(3) If an archbishop hear a case that should be judged in the first instance by the bishop.

(4) If a bishop prevent a priest from taking an appeal to the higher court.

(5) If a bishop dispense with the provisions of the law and issue censures arbitrarily.

4. A canon says : ' Be ye subject to your bishop, and hold him as the parent of your soul. . . . But let bishops know that they are priests, not lords. Let them honour the clergy as clerics, so that these may pay honour to them as to bishops.'

*C. Esto  
subjectus,  
7 dist. 95*

5. The remedies against abuse of power are four :

(1) A petition or humble representation, *i.e.* a recourse from a superior badly informed to one well informed.

(2) An appeal (*q.v.*).

(3) A complaint or an extra-judicial appeal.

(4) A challenge of the judge for reasons allowed by law.

## ACCEPTATION OF PERSONS

1. Acceptation of persons is a vice opposed to distributive justice (*q.v.*).

2. It finds place when, in laying down the law or in distributing common goods or honours, there is given, not according to merit, something which *ex iustitia* should be given to another. This excludes cases of mere liberality.

3. It is thus defined by Van Espen : ' Iniustitia qua praeferitur persona personae propter causam indebitam.'

*Iur.  
Ecclcs.  
Univ. p.  
ii ; tit. 31 ;  
c. 1 ; n. 1*

## ACCUSATION

1. The accusation is the matter that the accuser lays before the judge.

2. The accusation must be made in due form, *i.e.* :

(1) It must be in writing, unless custom allows it to be made *viva voce*.

(2) It must be laid before a competent judge.

(3) It must contain the names of the judge, of the accused, the crime, the place, and the year and month. If one of these be wanting, the accusation is vicious, and should be rejected.

3. In the ecclesiastical courts the accusation is formally presented by the fiscal procurator (*q.v.*), but he ordinarily only acts when set in motion by a denunciation or public clamour.

4. An accusation brought against a person who, after inquiry, has been absolved from guilt cannot be repeated—*non bis in idem*—unless there be shown that there was collusion or irregularity in the former proceedings, or that the accused continues to commit the same crime, or, lastly, that the judge was incompetent.

5. Regularly speaking, no one can be condemned without an accusation.

### ACCUSER

1. The accuser is the one who enters the plea before the judge with intent of obtaining the punishment of the accused, and undertakes to prove his charge.

2. He differs from the delator in that he seeks the punishment of the guilty, while the delator only seeks the amendment.

3. The accuser is obliged to present his accusation in the form of a libel signed by himself, stating the names of the accused, and specifying the kind of crime, the month and the year, and the place where it was committed.

4. If the accuser does not prove his case, he may incur the punishment demanded for the accused. St. Pius V. Constit. *Cum primum*, 1566, renews the *lex talionis* against calumnious accusations of simony or concubinage in these words: 'If anyone is found to have denounced others *ex calumnia*, we will that they be bound to the *poena talionis*.' Some canonists hold that this is extended to all calumny in a serious matter before justice; but others say the *lex talionis* has fallen into disuse. In this matter, then, the custom of the tribunal is to be observed. At any rate, an accuser who fails fully and perfectly in his charge may, if malice be proved, himself be charged for malicious prosecution; and he then becomes infamous and irregular.

5. The following have no *locus standi* as accusers in law:

(1) Infants under the age of puberty and those without the use of reason. These can appear in criminal cases.

(2) Women, except in cases of injuries inflicted on themselves or on others belonging to them, or where the public good demands it.

- (3) Those under excommunication.
- (4) Those who are unwilling.
- (5) Children against their parents, and *vice versa*.
- (6) Married people against each other.
- (7) Brother against brother.

6. In criminal cases where the punishment is corporal or considered greater than exile, the accuser must appear in person; in other criminal cases he can appear by procurator, unless it be necessary to examine him as to his personal qualities, or that his statements require cross-examination. In a word, the judge may require the presence of the accuser when the ends of justice so require. Without this necessity the inferior ecclesiastical judge cannot insist upon the personal appearance of the accuser. If he be cited, the cause of the citation must be expressed, otherwise the citation does not bind.

### ADMINISTRATION

1. Administration implies inferiority, and therefore responsibility to a superior.

2. As the Pope is the universal administrator and guardian of all goods given to God for the Church and for the poor, so the bishop in his diocese is, in the name of the Church, the official guardian of the temporalities of the churches of his diocese, and has to carry out the laws of the Church for their safe handling.<sup>1</sup> He has, according to Zitelli, *cura et quasi tutela* of ecclesiastical goods; and he therefore should arrange, according to the different civil laws, whatever means are necessary for the safer keeping and for transmission of ecclesiastical property to his successor. Even of his own episcopal *mensa* or income, it is expedient that he should have one or more procurators (*q.v.*), who shall administer his temporalities subject to his approval.

*Apparatus  
Iuris  
Ecclesiastici,*  
p. 50

3. As regards parochial or quasi-parochial property, whatever may be the plan pursued, the principle is the same, viz. that such property is a pious foundation for that church, and it cannot be unlawfully alienated to any other pious use without incurring the pains and penalties proclaimed against alienation (*q.v.*). 'The

<sup>1</sup> In the usual form of the Apostolic breve providing a bishop, there is committed to him fully 'the care, ruling, and administration of the Church in spirituals and in temporals.' The words 'committing,' 'care,' 'ruling,' and 'administration' exclude the idea of dominion.

pastor is the administrator *ex officio* (*administrator-natus*) of the property of his congregation. His rights, however, in this matter are always subordinate to the authority of the bishop, to whom belongs, as the Third Plenary Council of Baltimore [n. 272] says, the 'tutela et superior administratio bonorum dioecesanorum,' and whose duty, therefore, it is to see that in each church and ecclesiastical or pious establishment of his diocese the Church property shall be wisely administered.'

Smith,  
i. 444

The  
Second  
Plenary  
Council of  
Baltimore  
[n. 201-2]

4. Lay trustees can be appointed to manage the temporalities of parishes provided they are appointed by ecclesiastical authority.<sup>1</sup>  
*See FABRIC.*

5. The bishop, as head administrator of his diocese, can demand an oath of fidelity from the administrators of pious places and foundations; he can also, in and out of visitation, demand accounts of their administration. This is a power which belongs to the common good of the Church.

6. This account can be demanded every year, and administrators are obliged to yield it. 'The Third Plenary Council of Baltimore [n. 272] enacts that all rectors of the United States shall give the bishop a financial statement every year.'

Smith,  
i. 444

7. The bishop can demand an account of administration from the vicar capitular (*q.v.*), and from all officers or administrators during the vacancy of the see.

8. The bishop in administering his diocese should observe the common law concerning those things which require the consent of his chapter or the advice of his consultors.

9. Rectors or pastors are bound to keep the accounts of their quasi-parish, and their books are to be audited by persons appointed by the bishop.

10. Rectors are forbidden to put their churches into debt without the expressed and written leave of the ordinary, and delinquents in this respect can, *servatis servandis*, be punished by the bishop.

11. According to the Constitution *Apostolicae Sedis* it is, generally speaking, forbidden, under pain of excommunication *latæ sententiæ* to alienate (*i.e.* to sell, mortgage, or lease for more than three

<sup>1</sup> In many of the dioceses of the United States, *e.g.* in that of Newark, each church forms a corporation, consisting of the bishop, his vicar general, and the pastor of the congregation, who may, by a majority, select two lay members of the congregation, to form with them a board of trustees. The lay members hold their office only for a year. By this means there is secured a preponderance of clerical trustees, for the Church recognises in laymen no inherent right of administering Church property; but, on the other hand, local interests are duly represented.

years, &c.) Church property, movable or immovable, without permission from the Holy See. See ALIENATION.

12. Hence, for the purpose of preserving intact ecclesiastical property, it is ordered that an inventory of each quasi-parish be drawn up in two copies, one to be sent to the bishop and one to be kept among the parochial papers. The Provincial Council of Westminster says: 'As soon, therefore, as any priest enters on a mission, an inventory of all property belonging to the mission should be placed in his hands by the rural dean or by some one deputed by the bishop.' It is clear that, in England, the diocesan authority is bound to provide the inventory for the new comer.

II. Westminster.  
viii. § 12

13. The same Council prescribes that the administrator of any mission 'should by all means keep a day-book of all the receipts and expenses of the mission,' to be entered daily; also a ledger, to be made up every month or three months, 'according to the heads under which each sum received or expended ought to be placed.' He should also keep an open account at some bank in the names of himself and of two respectable persons, who 'should be made aware that they are named merely to secure the money from any danger of being lost, and they must not interfere in the administration of it. If one of these fail through any cause, the two that remain will take care that another be chosen by the bishop to fill the place. Wherefore no administrator should keep on hand more than £20 belonging to the mission—that is, of money which is not his own property—but should carefully place it in the bank. No administrator of a mission should draw up any legal documents concerning Church property without the express authority of the bishop, who will not fail to consult lawyers most skilled in these matters, and subject everything to the most careful revision. All buildings belonging to a mission should be insured against fire by an annual payment to some insurance company.'

*Ibid.*  
§§ 17-20

14. As regards the temporalities of a diocese, the First Council of Westminster decrees: 'It is also fitting that the bishop should select from his chapter or from the body of his clergy a few men of judgment to help him in the administration of the temporalities of the diocese. He should often advise with these, to the end that pious foundations may be managed in the best way possible and maintained in safety;<sup>1</sup> and that the collections made among the

<sup>1</sup> As most of the Church property in England is held by trustees, it may be as well briefly to put down some points of the civil law. (1) A trust may be defined as a confidence reposed by one person in conveying or bequeathing property to another that the latter will apply it to the purposes directed by the former. (2) Trust moneys must be invested according to the directions contained in the



## 16 ADMINISTRATION—ADMINISTRATOR APOSTOLIC

Decree  
xiv. § 4

faithful may be distributed and applied with wisdom and advantage, and without any party spirit.'

I. West.  
Decree  
xxv. §§ 6, 5

15. As regards foundations for masses, the same Provincial Synod decrees that : ' If any of the faithful wish to make a foundation for an anniversary or daily mass, the matter must be referred to the determination of the bishop, and the sum contributed for this object must be profitably invested, so as to produce annual interest for a perpetual endowment, in accordance with the regulations of Canon Law, as far as circumstances of time and place will allow.' No new obligations of this kind are to be accepted without the approbation of the bishop ; and if the existing obligations appear too burdensome, and the endowment for them inadequate, the rector should apply to the bishop or lay the matter before him at the time of visitation.

Decree  
viii. §§ 1, 2

16. The Second Westminster Synod says of Church property that ' the administrators or guardians of them, whether ecclesiastics or laymen, are to be deemed merely dispensers of them ; ' and decrees that ' every effort must be made to determine, if there be any doubt, the intention and purpose of the donor or testator of each fund, so that the proceeds of it may be rigidly applied to the use prescribed by him.' The Synod is emphatic in the duty of strictly observing the intention of the founder.

### ADMINISTRATOR

1. Generally speaking, an administrator is one who is charged with taking care of the property or the business of another.

2. In canon law it is confined to those who are charged with the administration of the goods of the Church, whether these be temporal or spiritual.

### ADMINISTRATOR APOSTOLIC

1. An administrator apostolic is a prelate whom the Pope appoints to administer a diocese either during the vacancy of the see or when the resident bishop is not able to fulfil his functions.

trust instrument ; and if there are no such directions the law, by the Trustee Act of 1893, has settled what are legal investments for trustees. (3) The Court of Chancery, if requested to do so by a trustee or beneficiary, can appoint a judicial trustee either jointly with another or as sole trustee. (4) A trustee is liable to be convicted of a misdemeanour and sentenced to penal servitude if found guilty of converting or appropriating any part of the trust property to his own use and benefit. (5) The fruit of a trust cannot be applied to any other object than that of the trust : both in canon and civil law such fruit belongs to the original church. *See ECCLESIASTICAL PROPERTY.*

2. An administrator apostolic is appointed during the vacancy of a see only when there is a grave necessity. Thus, according to common law, the diocese, *sede vacante*, is ruled by the vicar capitular (*q.v.*) or in the United States by the administrator; but should this official be acknowledged incapable or should the diocese be vacant for a long time, an administrator apostolic may be appointed.

3. Sometimes an administrator apostolic is only a priest when the administration is only for a short time; sometimes he is a bishop. It often happens, when a bishop has resigned his see, that he is appointed administrator apostolic of his old diocese until the appointment of his successor. Or if a diocese be divided the bishop retains as administrator apostolic the management of the new diocese until the first bishop be appointed.

4. An administrator apostolic has the same jurisdiction as the bishop in whose place he administers. He can do all things that the bishop can do, saving *pontificalia* if he be not himself a bishop. But his powers are always defined in the breve of appointment.

5. Sometimes an administrator apostolic is sent to a diocese which is not vacant, but whose bishop, for some reason, is not able or fit to govern. In this case also the administrator has all the power, and the bishop cannot interfere in the exercise of jurisdiction.

6. As in such cases all the jurisdiction passes to the administrator apostolic, the episcopal vicar general ceases to have any jurisdiction; and the administrator can appoint his own vicar general or vicegerent.

7. On the death of the bishop the administrator remains in office; for by his delegation the Pope has taken over the administration of the diocese into his own hands. Therefore in such cases there is no election of a vicar capitular.

8. The administrator apostolic is bound *sede plena* to reside in the diocese.

9. The administrator having the ordinary jurisdiction of the diocese, the appeal from his sentence lies in the first place to the metropolitan, except when he uses delegated faculties.

10. An administrator apostolic has some, but not all, of the honours due to the diocesan, *e.g.* he cannot use the throne, but he can use the pastoral staff. He cannot give indulgences of fifty days. His anniversary of consecration is not observed, and his name is not mentioned in the canon. He has no right to the seventh candle or to deacons of honour. He cannot issue pastorals.

He cannot wear the *mozzetta*. He cannot bless the candles, ashes, or palms unless he sings the Mass. He has his own seal.

11. He has a right to a fitting support from the income of the see.

12. His office ends, besides the cases of resignation and death, when the Pope withdraws his powers, or when ordinary jurisdiction is restored by the bishop ; or, if after a vacancy, when the new bishop has taken canonical possession of his see.

### ADMINISTRATOR OF VACANT DIOCESE

1. The Second Plenary Council of Baltimore has laid down the procedure for appointing administrators of vacant dioceses in the United States :

(1) The administrator can be appointed by the bishop himself before death [n. 96].

(2) Should this have been omitted, the metropolitan or the senior suffragan will appoint the administrator [n. 97].

(3) The senior suffragan appoints the administrator of the metropolitan diocese should the archbishop have failed to do so.

(4) If the diocese become vacant by resignation or translation, the appointment is in the hands of the metropolitan or senior suffragan, as the case may be.

(5) In all these cases the appointment is merely provisional, and the Holy See reserves the right of confirming or of altering it.

2. The powers of the administrator, besides those of the ordinary jurisdiction, include :

(1) The faculties contained in Form I., excepting those which require the episcopal character or the use of the holy oils, can be conferred upon an administrator by the one who appoints him [n. 97].

(2) As regards the other faculties, ordinary and extraordinary, which bishops enjoy by the grant of the Holy See, the administrators of vacant sees within the provinces of Baltimore and Philadelphia, by a provisional grant made in 1869, now enjoy these.

3. In other countries where there are vicars apostolic (*q.v.*), the vicar general (*q.v.*), by the death of the prelate, becomes administrator *ipso facto* by authority of the Holy See.

4. In countries where there are ordinary bishops, but no chapters, the parish priests elect the administrator ; but where there is no possibility of having an election the vicar general of the former prelate *ipso facto* becomes administrator of the vacant see. See VICAR CAPITULAR.

## ADVOCATE

1. An advocate is one who conducts a case for a client present in court, and assists him by counsel and by setting before the judge the arguments of law and fact. His office must be distinguished from that of a procurator (*q.v.*) or proxy who acts for an absent client.

2. In ecclesiastical cases anyone can act as an advocate unless he be prohibited in law. Thus :

(1) Heretics and excommunicated persons are not allowed to appear as advocates, having no *locus standi* in the Church.

(2) Also those who are *notabiliter* infamous. These can plead for themselves but not for others.

(3) Those who are infamous but not *notabiliter* can also plead for their relatives, minors, and wards.

(4) Regulars are excluded except in favour of their monastery and with the licence of their superior. The Friars Minor cannot, in any case, act as advocates.

(5) Women are, generally speaking, disqualified.

(6) The one who acts as a judge in the case cannot also appear as an advocate in the same case.

(7) Those ignorant of the law are also excluded.<sup>1</sup>

3. All clerics can act as advocates ; but the S.C.P.F. in 1884, in the instruction *Cum magnopere*, which obtains in the larger dioceses of England, in Scotland, and in most of the dioceses of the United States, seems to speak of a priest only : *per alium sacerdotem*.

4. All clerics whatever, whether defendants or plaintiffs, have a right to employ an advocate ; for by the common law an advocate is allowed before ecclesiastical courts in all cases whatever unless specially excepted by law. The S.C.P.F., in an instruction to the American bishops, July 20, 1878, distinctly lays down that the

<sup>1</sup> No examination or degree is required by common law for advocates in the ecclesiastical courts ; but the S.C.P.F., in a reply to certain questions sent up by the American bishops, expressly declares that the advocate should be approved of by the bishop. Dr. Smith remarks : 'It is scarcely necessary to observe in passing that this approbation cannot be refused arbitrarily. . . . The words of the Sacred Congregation are : "Liberum cuique rectori est alium sacerdotem ab episcopo tamen approbandum secum habere coram Consilio sive ad simplicem adstantiam sive ad suas animadversiones aut defensionem exhibendam." Hence the right of the bishop to approve cannot be used in such a manner as to destroy the right of the rector as defendant to choose an advocate' (vol. ii. p. 53). And the learned author makes the practical suggestion that for the avoidance of disputes it would be well to follow the general custom of having ecclesiastics permanently approved from whom a defendant can choose his advocate.

procedure in the case of rectors shall serve as a model for the other cases ; and also says that the defendant is to have full right of defending himself.

5. When a litigant cannot procure an advocate the judge is bound to provide him with one unless he prefers to conduct his own case. And the law is so stringent on the point that time must be allowed to the defendant to find an advocate ; and meanwhile he cannot be condemned for contumacy.

6. The Westminster Synods say nothing one way or the other about advocates, so the common law would seem to obtain, based as it is upon the natural right of self-defence.

7. The duties and obligations of an advocate are thus summarised :

(1) He must not be ignorant of the law.

(2) He cannot engage in a case which he knows is certainly unjust or bad ; except when acting in defence in some criminal matter, for then the accused is only obliged to undergo punishment after conviction.

(3) Having undertaken a case, he is bound to conduct it faithfully and with all skill and diligence. Hence he is bound to preserve the secrets of his client ; he cannot cite false law or put wrong interpretations upon it ; he cannot use false documents, or corrupt or intimidate witnesses ; he should not give up the case against the will of his client or unless sentence is passed.

(4) An advocate who is publicly approved cannot refuse without just cause to undertake, when called upon by the judge, the cause of a litigant who cannot otherwise secure an advocate.

8. An advocate has a right to his fee. And before undertaking a case he can bargain with his client unless the amount be established by law or custom. The amount should be what is considered fair compensation when the labour, time, and difficulty of the case are considered along with the position and ability of the advocate. There is no reason why the fees customary in civil cases should not be claimed in ecclesiastical causes.

9. There is no inherent reason why competent laymen should not be allowed to plead in the Courts Christian as advocates. They sometimes have to appear as plaintiffs or defendants or witnesses ; and it would seem that where there is no particular law against them, a bishop would not prohibit them from acting as advocates ; but where the Constitution *Cum magnopere* obtains there seems no place for them.

# AFFINITY

1. Affinity is a relationship which arises from perfect carnal knowledge, whether this be lawful or unlawful. Affinity exists between the man and his wife's relations, and between the woman and her husband's relations. But there is no affinity between the relations of the spouses.

2. Affinity, therefore, is only contracted by *matrimonium consummatum*, not by *matrimonium ratum*. See MATRIMONY.

3. According to present law affinity *ex copula licita* affects to the fourth degree inclusive in the collateral line and in the entire direct line.

4. Affinity arising *ex copula illicita* or fornication affects to the second degree inclusive.

5. Affinity is a diriment impediment (*q.v.*) to matrimony, so that while the impediment lasts the marriage contract is not only unlawful, but is null and void *ab initio*.

6. The rules for computing the degrees of affinity are as follows :

(1) In the straight or direct line the number of degrees equals the number of persons after subtracting the *stirpes* or stem.

(2) In the collateral line, if equal, the number of degrees is reckoned according to the number of persons included on either side furthest from the stem.

(3) In the collateral line, if unequal, the number of degrees is reckoned according to the number of persons included in the side furthest from the stem.

7. Affinity is sometimes manifold ; and this arises—

(1) From carnal knowledge of many blood relations of the partner.

(2) From repeated carnal knowledge of a blood relation of the partner.

(3) From carnal knowledge by both partners with each other's blood relations.

(4) And this, whether the carnal knowledge be lawful or unlawful. Moreover, affinity is multiplied if many of these causes concur.

8. If affinity be contracted after matrimony the guilty party cannot demand marital rights if the unlawful knowledge were with one within the second degree of affinity, unless, says St. Alfonso [n. 1074], the incestuous intercourse was achieved by fear or force, or by ignorance *facti* and more probably by ignorance of the law and penalty.

Trent,  
Sess. 24,  
cap. 4, *de*  
*matrimo*  
*onio*



9. There are various opinions among canonists as to the degree to which extends the impediment of affinity arising from an invalid marriage which has been consummated. The more probable opinion is that it extends to the fourth degree.

10. As affinity arises from a natural act, it is a diriment impediment among baptised persons even if it were contracted before baptism.

Cf  
S.C.P.F.  
23 August,  
1852

### ALIENATION

1. *Alienation* is the act whereby the direct *dominium*, or use, or usufruct, or right to anything is transferred to another, whether by sale, grant, mortgage, or exchange.

2. Alienation of ecclesiastical property is forbidden by divine and by canon law, and concerns immovable and movable goods of value. By immovable goods are meant such as lands, houses ; also rights annexed to property, money destined for building a church or for the grave necessities of a church ; income, &c. By movable goods of value are meant great relics, articles of the church's treasury, which, on account of their rarity, artistic worth, antiquity are considered to be valuable ; also flocks and crops, &c.

3. Ecclesiastical property is of two kinds : common and mensal. *Common* ecclesiastical property is that which belongs *in genere* to the patrimony of a church. *Mensal* is that which is destined to the support of those who serve that church ; it is annexed to the office.

4. Common ecclesiastical property can be alienated for a just cause, if the proper formalities (*solemnitates*) are observed. As to mensal property there is grave doubt whether it can be alienated at all ; and those legists who hold that it can, require the special leave of the Pope.

5. Hence a bishop cannot take away the endowment of a church, for that would be alienating it from its original intention. If there be a cause for alienating some of the common goods of that church, he can, by law, only act with the prescribed formalities. To take away the *mensal* goods is beyond his power, save with the special leave of the Pope, who, before arriving at a decision, will hear all interested parties.

6. The just causes recognised in law for alienation are four in number :

(1) The evident necessity of a church which cannot be helped otherwise : *e.g.* if the church be in debt, and have no other means of meeting its liabilities.



(2) The manifest utility of the church : *e.g.* if something be parted with to buy a better article or exchanged for something more useful.

(3) Piety : *e.g.* if church goods be sold for redeeming captives, feeding the poor in time of great famine, for building the church, or for enlarging the cemetery.

(4) Convenience : *e.g.* if the article to be alienated be more trouble in keeping than it be worth.

7. The formalities (*solemnitates*) required in law for alienation are also four in number :

(1) The preliminary discussion (*tractatus*) between bishop and chapter.

(2) The consent of the chapter, or at least of the greater and wiser part.

(3) The signature of the chapter.

(4) The consent of the church interested, and also the consent of the Pope.<sup>1</sup>

8. In alienating the property of a church all those interested have to be heard, and their representations taken into account when considering the justice of the act. This is clear from an instruction of the S.C.P.F. dated July 30, 1867, on alienation.

9. It is not lawful for ecclesiastical goods to be leased for a period exceeding three years ; but the ordinary, if he have the special leave of the Apostolic See, can permit leases for a longer period, but this must not exceed nine years.

10. Mortgages, as putting property in certain cases beyond the control of the owner, are forbidden as alienations.

11. There are certain things, however, which admit of alienation if they possess little or no value. Canonists, in some countries, say that papal leave is not required for alienating property worth 5*l.* (\$25), or even up to 20*l.* (\$100). The leave of the bishop is sufficient ; but even in this case, for safety sake, the consent of the chapter should be obtained. In the United States the Third Plenary Council of Baltimore [n. 20] lays down that all alienations involving a sum greater than \$5,000 require papal leave. But owing to peculiar circumstances of the country a limited leave for ten years was granted, September 25, 1885, to the American bishops

Smith, i.  
p. 444

<sup>1</sup> In his consecration oath a bishop swears : 'I will not sell the possessions belonging to my *mensa*, nor will I give, nor pledge, nor *de novo infeudabo vel aliquo modo alienabo*, even with the consent of the chapter of my church, without consulting the Roman Pontiff. And if I do alienate them I wish thereby to incur the penalties contained in any Constitutions about this matter.'

dispensing them from the obligation of obtaining the papal permission.

12. If the rector of a church wishes to alienate, the consent of the bishop is necessary; but when the bishop wishes to do so, whether it be the property of the cathedral or of his own *mensa* or of the diocese, the consent of the chapter is necessary. In America the advice of the consultors (*q.v.*) is required for any sum over \$5,000; and this advice can only be given legally after a full discussion of the causes calling for the alienation.

Smith, i.  
p. 489

13. The laws concerning alienation also extend to anything that has the appearance of alienation.

14. The effects of unlawful alienation *in foro interno* and *in foro externo* are as follows:

(1) The alienation, even if made without fraud, is null and void.

(2) Those concerned in the alienation incur, according to the Constitution *Apostolicae Sedis*, excommunication *latae sententiae*, which is not reserved.

15. The Second Westminster Council says on alienations: 'Much less is it lawful for any cleric, or even for the bishop himself, to alienate church property; as is evident from almost numberless decrees of canon law. If, however, on account of reasons approved by the canons, such an alienation become necessary, the priest can never act in this matter without the authority of the bishop, nor the bishop without the precautions required by canon law.'

Dec. viii.  
§ 8

## ALIMENT

1. Aliment includes generally all that is necessary for the honest and fitting support of life, viz. food, drink, clothing, lodging, medicine, attendance, and the like. All these are to be considered in relation to the position and condition of the person concerned, and also in relation to the *congrua* (*q.v.*).

2. Clerics have the right to aliment from their benefice (*q.v.*) or quasi-benefice, no matter whether they have private means of their own or not.

3. But clerics who have suffered deprivation of the benefice to which they were ordained have no claim for aliment from the benefice.

4. Clerics who are under suspension (*q.v.*), and who have no other means, can have their aliment from the benefice. But it must

be remembered that that aliment only extends to the necessities, not to the comforts, of life.

5. Those who render themselves unworthy of the ministry, and are therefore deprived of their office, or are under suspension, have no right to the ample support which other clerics can claim. It is sufficient if they have what is necessary to keep them from begging or doing secular work. Contumacy (*q.v.*), however, deprives a cleric even of this right.

6. Hence a cleric who is deprived or suspended, but is free from contumacy, can obtain from his bishop the bare necessities of life, so that the entire ecclesiastical state may not be disgraced.

7. The Third Plenary Council of Baltimore, while recognising that there is no claim *ex iustitia* upon the bishop, says that those who are ordained on the title (*q.v.*) of the mission should be supported by the mission [*n.* 72].

*Traité des  
peines  
ecclési-  
astiques,*  
pp. 31-33

8. Hence, as Strembler writes: 'Dismissal from benefice always leaves to the cleric who is dismissed the right to the means of subsistence. The ecclesiastical judge is bound in conscience to provide for the support of the person condemned, and if he refuse to comply with this duty of justice he can be compelled to do it by his superior. He should assign to the cleric who is deprived of his benefice, and who has no other means of subsistence, an alimentary pension or keep him in a monastery, according to the gravity of the offence, and not allow him to tramp about deprived of all means of living. For, say the sacred canons: *Paupertas cogit ad turpia.*' And the Council of Trent says: 'It beseemeth not those who are enrolled in the divine ministry to beg or to exercise any sordid trade, to the disgrace of their order.' Hence, in such matters the Church acts, as Dr. Smith says truly, 'not so much as a matter of justice or out of consideration for the offender, as out of regard for the ecclesiastical dignity.'

Sess. 21,  
cap. 2, *d. r.*

*Op. cit.*  
III. p. 99

9. The S.C.P.F., on February 4, 1873, declared that the bishop is not bound to support deprived priests who are ordained on the title of the mission as long as they persevere in a wicked course and show no signs of sincere repentance. But the same Congregation warn the bishop who sent up the *dubium* not to arrive at such a declaration except he has called in vain upon the priest, by repeated and paternal monitions, to repentance.

10. The Fourth Council of Westminster, following a decree [*n.* 77] of the Second Plenary Council of Baltimore, says: 'Priests, to whom the exercise of their ministry has been forbidden by the

sentence of the ordinary, have no claim upon him for support, since by their own fault they have rendered themselves incapable of working upon missions. However, before sentence of this kind is pronounced, the accused should be admonished ; and should he not improve, the same process should be followed in his case as the Sacred Congregation of Propaganda, by its decree August 4, 1853, forwarded to the bishops of England, prescribed previous to the final rejection of a missionary rector.'

Decree xii.  
§ 8

11. This loss of aliment, therefore, can only be arrived at after a cleric has been dismissed by formal sentence after a commission of investigation (*q.v.*).

12. The aliment is to be taken from the ordinary revenues of the parish or other benefice of the person dismissed, where these revenues are sufficient. Failing these, the ordinary sources of the diocese have to be called upon, such as the taxes and alms which come from the episcopal chancery, fines, &c. These, by law, have to be applied to pious and charitable uses.

## ALTERNATIVES

1. Alternatives refer to a method of conferring benefices.

2. The ninth rule of the Roman Chancery contains the papal right of reservations as regards benefices falling vacant under certain conditions. The Pope nominates to all benefices falling vacant, otherwise than by resignation, during the months of January, February, April, May, July, August, October, and November, eight months in all. But a bishop who observes the law of residence may obtain leave to nominate to all benefices not otherwise affected or reserved, in the months of February, April, June, August, October, December. Such an indult was granted to the English bishops in 1852. Hence the alternate months are as follows :

### *Papal.*

1. January.
3. March.
5. May.
7. July.
9. September.
11. November.

### *Episcopal.*

2. February.
4. April.
6. June.
8. August.
10. October.
12. December.

apostasy differs from heresy (*q.v.*), which is a partial as opposed to a total defection. Every apostate is guilty of heresy, but a heretic is not necessarily guilty of apostasy.

4. The penalty for apostasy from the faith is excommunication *latae sententiae* reserved in a special manner to the Roman Pontiff; and the Constitution *Apostolicae Sedis* smites with the same censure all who uphold, receive, favour, and defend apostates.

5. In the strict sense apostasy from obedience is a schismatical and contumacious withdrawal from the commands of the Church.

6. Its penalties are the same as for apostasy from the faith; but the Constitution says nothing about their upholders, &c.

7. Apostasy from religious vows is a criminous, temerarious, and unlicensed defection from a religious order when it is joined with the mind of not returning to the regular institute. Failing these qualifications, the offender is a fugitive (*q.v.*), not an apostate.

8. The penalties for religious apostates are :

- (1) Excommunication *ipso facto*.
- (2) Suspension from any orders received during apostasy.
- (3) Loss during apostasy of all the privileges of the order.

9. Regular prelates are bound to recall and compel apostates to return. Fagnanus holds that this obligation comes *ex iure divino*, for the apostate remains of the fold though he has wandered away. Urban VIII. in a decree of S.C.C., 21 September, 1624, and Innocent XII. by a decree of the same Congregation, 24 July, 1694, have renewed the obligation.

10. Apostasy from holy orders is when one voluntarily returns to the lay life or enters the married state in spite of his vow of celibacy (*q.v.*).

11. The penalties are :

- (1) For those who attempt to contract matrimony, excommunication *latae sententiae* reserved to their ordinaries.
- (2) For those who lay aside the clerical dress in apostasy but do not attempt to marry, excommunication *sententiae ferendae*.
- (3) Infamy (*q.v.*) at law.
- (4) Irregularity (*q.v.*) if they attempt matrimony, on account of the quasi-bigamy.
- (5) Loss of the privilege of the *canon*, and, after three months' contumacy, the loss, by judicial sentence, of the privilege of the *forum*.

In cap.  
*Ne re-*  
*ligiosi,*  
deregular.  
num. 4 *et*  
*seq.*

## APOSTILS

1. Apostils are letters concerning an appeal (*q.v.*) from a lower to a higher court.

2. They are of various kinds :

(1) Conventional, given by the adverse party admitting the appeal.

(2) Dimissorial, by which the judge *a quo* sends the appellant to the judge *ad quem*.

(3) Reverential, by which the judge through respect for his superior defers the appeal.

(4) Refutatory, by which the judge does not admit the appeal, and gives his reasons.

(5) Testimonial, which are not given by a judge, but by other persons of standing, who bear witness that the plaintiff has asked for apostils and has been refused.

3. If a judge when asked refuse to grant apostils, and meanwhile proceeds in the case, the process is not valid unless the appeal be renounced.

4. If the person interested do not ask for apostils within thirty days, he is considered to have renounced his appeal.

5. *De iure ecclesiastico* the use of apostils is needed for appeals to the Holy See.

6. But it would seem that in appeals from the lower to the higher courts, or from a bishop to the metropolitan, they are no longer needed.

7. In their stead the appellant has the right to demand a copy both of the sentence or decree from which he appeals and of the appeal itself as authenticated by the *iudex a quo*. This certificate of appeal is to be presented by the appellant to the *iudex ad quem*, who, admitting the appeal *in devolutive*, gives the appellant letters mandatory which command the *iudex a quo* to forward to his superior within a stated time all the acts of the case. If the appeal be received *in suspensivo*, the *iudex ad quem* also issues letters inhibitory, by which the *iudex a quo* is forbidden to proceed with the case.

## APOSTOLIC CANONS

1. The collection of dogmatic and disciplinary canons affecting bishops, presbyters, deacons, clerics, subdeacons, singers, readers, and laity and known as Canons of the Apostles, represent *in part*

a probable Apostolic tradition. But no serious critic accepts St. Clement of Rome as their author, though some have looked to Clement of Alexandria as the originator of a similar collection.

2. The canons vary in number, and while in Latin collections we find only fifty, the Greeks acknowledge eighty-five.

3. There are many things in these canons which show that ignorance, if not fraud, has been at work.

4. As to the date of the collection, as a whole, it does not seem to have been known before the end of the fifth century ; but some of the canons are quoted by councils of the fourth and third centuries.

5. Where ignorance or fraud has not been at work, they witness to the faith and discipline existing in the fourth, third, or even the second centuries, and, perhaps, in Apostolic times.

### APOSTOLIC CONSTITUTIONS

1. It is certain, from reasons both intrinsic and extrinsic, that the Apostles were not the authors of the collection known as the Apostolic Constitutions. There are errors in the dogmatic parts, and mistakes in the disciplinary and historical sections.

2. The Fathers of the first, second, and third centuries are silent as to the existence of such a code of rules. Epiphanius, at the end of the fourth century, is the first to mention them, though not as the work of the Apostles but as belonging to the prevailing discipline. It would therefore seem that we must assign the collection to the fourth century.

3. From passages quoted by Epiphanius, it is clear that the collection, as we have it, has been falsified by ignorance or fraud ; but when subjected to sane criticism, the Apostolic Constitutions afford us a valuable abridgment of ecclesiastical discipline in the fourth century.

4. The first six books are called the *Didascalia* in a Syriac text of the third century. Before 325 two other works were drawn up, one a collection of moral and liturgical precepts borrowed from the doctrine of the Apostles, and the other a sort of ritual for bishops. In the fourth century these two were added to the original six books, and form books seven and eight under the definitive name of the Constitutions of the Apostles. Toward the beginning of the sixth century there was added to the eighth book a series of disciplinary laws called Canons of the Apostles.

## APOSTOLIC DELEGATE

1. Apostolic delegates are legates (*q.v.*) sent, with special powers, from the Holy See to some country, province, or church.

2. They are of two kinds, viz. those with a temporary delegation, and those with a permanent delegation. The powers of the former are strictly confined to the terms of their mandate, while the latter have both those rights recognised by the Common Law as well as special duties and privileges enumerated in their breve of appointment.

3. Apostolic delegates come under the class of *Legati iudices*, and have ordinary jurisdiction within their districts. Those with a permanent delegation (*q.v.*), or who are appointed *ad beneplacitum Apostolicæ Sedis*, do not lose their jurisdiction upon the death of the Pope who appointed them.

4. Apostolic delegates differ from nuncios (*q.v.*) inasmuch as they are sent to countries only on purely ecclesiastical business. Hence they are not credited to secular governments, and have no direct communication with the civil authorities. They are not recognised as ambassadors, and have no claim to the rights allowed to these functionaries by the *Ius Gentium*.

5. According to Common Law an Apostolic delegate has the following powers :

(1) He has the supreme inspection over the churches in his district, and has to keep the Pope and the Congregation, to which he is attached, duly informed of all matters of importance.

(2) He can summon and preside over provincial and national councils ; and he can enact statutes which remain in force as part of the particular law of the country.

(3) He can receive appeals from the definite or quasi-definite sentences of the metropolitan or even primatial courts, for he is the direct representative of the Supreme Judge of the Church.

(4) In cases where the inferior judges are negligent and do not finish cases within the statutory term of two years, he can summon the cause to his own court and act as judge of first instance.

(5) He can hold ordinations, can consecrate bishops, churches, and receive vows, and can act as the ordinary of the district delegated to him : he is the ecclesiastical superior of every metropolitan, bishop, cleric, and layman.

(6) In his presence all lower jurisdiction fails, and he takes

D



precedence of all, excepting cardinals or other legates of greater authority than his own.

(7) He takes cognisance of the appointment of bishops ; and all recommendations from chapters, together with the results of the episcopal investigation, pass before him.

(8) He can issue dispensations and absolutions from censures and irregularity.

(9) His jurisdiction, like the Pope's, is concurrent with that of the bishops.

(10) In a word, his powers are ' to pluck up and to destroy, to plant and to build up,' and he is often sent where the Common Law is neglected.

6. The above are the powers of a legate *de iure*, but they are often limited according to the special circumstances of the delegation. Therefore in every given instance the terms of the mandate have to be considered.

7. As the immediate superior of the episcopate of the country, it is laid down that the bishops cannot exercise their power against his will and against the rules laid down by him. He can also correct, admonish, and even punish with censures the bishops and archbishops who are subjected to him in all things ecclesiastical. For he is not only their superior, but their judge and their ordinary.

8. He can subdelegate his powers, and once a cause has begun before the subdelegated judge the jurisdiction of such a judge continues even after the recall, resignation, or death of the delegate.

9. The general limitations to his power are the following :

(1) He cannot take cognisance of the greater causes of bishops which are reserved to the Holy See.

(2) He cannot interfere with a cause which has been delegated specially by the Holy See to another judge.

(3) He cannot receive an appeal in such cases.

(4) Nor can he intervene in the affairs of exempted regulars.

(5) He cannot appoint rectors to parishes.

(6) His jurisdiction in contentious matters cannot be exercised out of his district.

N.B.—All these, however, may form part of his mandate.

10. As the representative of the Pope, and vested with the supreme, ordinary, and immediate jurisdiction (*q.v.*) of the Pontiff, the Apostolic delegate is responsible for his ecclesiastical and spiritual acts only to the Holy See. But his subjects, if they have reason to apprehend an abuse of power, or have suffered in a way

beyond the intention of the Holy See, have always the right of recourse to the Pontiff himself.

11. He receives his support usually directly from the Holy See.

12. His official staff consists of an auditor (*q.v.*) and a secretary who are appointed by the Holy See.

13. By the civil law of England (1848) diplomatic relations with the Pope are allowed on the condition that no 'person in holy orders in the Church of Rome, or Jesuit, or member of any other religious order, community, or society of the Church of Rome, bound by monastic or religious vows,' can be received in England as ambassador, envoy extraordinary, minister plenipotentiary, or other diplomatic agent. In the United States there is not at present any legal authorisation for diplomatic relations with the Vatican. But both here and there, no legislation exists against the purely ecclesiastical office of an Apostolic delegate residing permanently in the district assigned to him by the Holy See.

14. For the sake of the dignity of the Holy See the Apostolic delegate is generally appointed a titular archbishop, and it is the custom to give him the title of 'Excellency.'

15. His powers expire by resignation, recall, and death. He is bound by the law of residence; so, to leave his charge permanently is to resign. If he be absent temporarily and without leave his contentious jurisdiction is suspended during his absence. When recalled, it is generally held that he retains jurisdiction until he has actually left his district. By death his extraordinary and personal faculties expire with him; his ordinary powers are annexed to the delegation and, according to the common opinion, pass to his successor as a matter of course.

## APOSTOLIC LETTERS

1. There are various kinds of Apostolic letters, and they are classed, primarily, according to their subject-matter or according to their form.

2. According to their subject-matter, Apostolic letters are *common ordinances*, which enact for the whole Church, or *particular ordinances*, which affect only private persons or some passing affair.

(1) The common ordinances are : *a.* constitutions (*q.v.*) ; *b.* decrees (*q.v.*) ; *c.* decretal letters (*q.v.*) ; *d.* encyclicals (*q.v.*).

(2) The particular ordinances are : rescripts (*q.v.*).

3. According to their form, Apostolic letters are, generally, issued in the form of a bull (*q.v.*) or a breve (*q.v.*).

Pius IX.  
Constit.  
*Apo-  
stolicae  
Sedis*, § ix.

4. Falsifiers of Apostolic letters incur excommunication *latae sententiae* specially reserved by the Pope; also those who publish or sign such knowingly.

5. Those who have recourse to the secular power to impede or to forbid the promulgation or the execution of an Apostolic letter, or those who on account of one molest or do harm to the parties interested, incur the same censure.

*Ibid.* n. 8

## APPEAL

### § 1. *Kinds of Appeal*

1. An appeal is an act whereby one aggrieved by the sentence of a lower judge (*q.v.*) carries the case to a higher court.

2. Appeals are of two kinds :

(1) Judicial.

(2) Extra-judicial.

3. A judicial appeal is one that is made from a judicial act : that is, from the sentence of a judge, whether this be a definitive or an interlocutory sentence (*q.v.*).

4. An extra-judicial appeal is one from some extra-judicial act whereby one is aggrieved or fears that he will probably be aggrieved. Such appeals are to be found in cases concerning elections (*q.v.*), collations (*q.v.*), and provisions (*q.v.*), &c.

5. The difference between the two kinds of appeals is seen to be threefold :

(1) A judicial appeal supposes that a judgment is passed ; an extra-judicial begins the cause or is provocatory.

(2) A judicial appeal supposes necessarily a judge *a quo* and a judge *ad quem* ; but an extra-judicial appeal lies against any one causing a grievance whether he be a judge or not.

(3) Finally a judicial appeal, even badly set forth, suspends execution and revokes the cause *in contrarium* ; whereas an extra-judicial appeal does not suspend execution or revoke the cause *in contrarium* unless it be well and reasonably set forth and admitted by the superior.

6. Appeals are :

(1) Reasonable and lawful, *i.e.* made for just cause and in due form ; these the judge is bound to admit.

(2) Frustratory, *i.e.* set forth for the purpose of prolonging the case ; these the judge is not bound to admit, and he can, moreover, punish a person unjustly appealing.

(3) Frivolous, *i.e.* based on light or futile reasons ; these the

judge is not bound to admit, and if known to him as such he can at once reject them.

7. The just causes for appeal are :

- (1) That an unlawful grievance may be remedied.
- (2) That the malice or ignorance of the judge may be corrected.
- (3) That the effects of ignorance or negligence may be removed.

### § 2. *The Effect of an Appeal*

8. The effect of an appeal is principally twofold : (1) Suspensive, (2) devolutive.

9. A suspensive appeal, or one *in suspensivo*, at once binds the hands of the judge *a quo*, and so stays his jurisdiction that he cannot proceed to the execution of his sentence.

10. A devolutive appeal, or one *in devolutivo*, reserves the whole case with its accessories to the judge *ad quem*, so that he, knowing the appeal to be just, can examine the case anew, and, if necessary, pass another sentence.

11. An appeal from a definitive sentence has, as a rule, a suspensive effect of the jurisdiction of the judge *a quo* ; but only in respect of the matter of the appeal. But the appellant can challenge in other cases the judge *a quo* as suspect, except in such cases as are notorious.

12. A lawful appeal has, besides the suspensive effect, also the devolutive. The judge *ad quem* may, out of courtesy, allow the inferior judge to pass sentence, but he must define what that sentence is to be.

13. Appeals concerning the *concursum* are *in devolutivo* ; also those to do with the collation of parishes. In appeals concerning the rights of patronage (*q.v.*) the effect is *in devolutivo*, except in the case where an ecclesiastical patron considers a candidate to be more worthy than the one to whom the bishop wishes to give institution (*q.v.*) ; it is then *in suspensivo*.

14. Appeals from sentences concerning nullity of marriages always have a suspensive effect.

### § 3. *The Appellants*

15. All persons, even if excommunicate, being unjustly aggrieved by a judge can appeal.

16. So can others indirectly affected by the sentence.

17. The persons who cannot appeal are :

- (1) Those who have renounced their right, either expressly or

tacitly, by neglecting the *fatalia* or the periods during which an appeal may be made.

(2) Those who expressly or tacitly have accepted the sentence passed against them.

(3) Those who have opposed the appeal cannot themselves appeal in the same cause.

(4) Those who have confessed their crime and have been juridically convicted.

(5) Excommunicated persons cannot make an extra-judicial appeal, only a judicial one : *i.e.* they cannot provoke a cause, but they can defend themselves.

(6) Those who have no interest, direct or indirect, in the cause.

#### § 4. *The Judges*

18. Appeals lie from all judges who recognise a superior judge. Hence no injury is done to a lower judge by appealing to his superior.

*Apo-  
stolicæ  
Sedis, 10*

19. No appeal can lie from a papal decision to a future general council. Those who make such an appeal incur excommunication (*q.v.*) *latae sententiae* reserved in a special manner to the Roman Pontiff. Nor can an appeal lie from a general council (*q.v.*) lawfully convoked and approved. Nor, according to the common opinion, can an appeal lie from the sentence of a whole Roman Congregation (*q.v.*). Especially will this be true of those decrees of the Sacred Office held on *Feria V.*, when the Pope himself acts as prefect.

20. Appeals must be made regularly, *i.e.* step by step from the judge *a quo* to his nearest and immediate superior.

21. But all may appeal :

(1) To the Pope immediately, *i.e.* omitting all intervening tribunals, in all spiritual and ecclesiastical cases. For the Pope is the ordinary judge of all Christians, and has concurrent jurisdiction with all other ordinaries. It is left to his prudence either to entertain the appeal immediately or to remit it to local courts of ordinary or delegate jurisdiction.

(2) To a legate in his province, for he holds the place of the Pope.

(3) To a superior, *e.g.* a metropolitan, if lawful custom permit, or there exist a privilege.

(4) To the metropolitan against a suffragan's vicar general.

(5) To the Pope immediately when a bishop litigates with a subject, and arbiters (*q.v.*) are elected.

(6) Lastly, to the superior when the intermediate judge is incapable.

### § 5. *From what Sentences*

22. A sentence (*q.v.*) is either :

(1) Definitive, *i.e.* one which defines and settles the principal cause before the court ; or

(2) Interlocutory, *i.e.* one which is concerned not with the principal cause, but with some points raised or with a side issue. These last sentences are subdivided into (a) merely interlocutory, and (b) having definitive force as to the points raised.

23. By common law appeal lies from both kinds of sentences, for it is, generally speaking, allowed to appeal except when the law expressly forbids it.

24. There is no appeal allowed by law in the following cases :

(1) Suspension *ex informata conscientia*. In this case there is only allowed a recourse (*q.v.*) to Rome. S.C.C.  
21 March,  
1643

(2) Excommunication, suspension, and interdict, when passed before the appeal is made. These do not allow of *suspensive* but only of *devolutive* appeal : that is to say, in such cases the censure has to be observed during the passage of the cause before the higher court. But if the appeal be made *before* the sentence, then the effect is suspended until on appeal it be either confirmed or declared invalid.

(3) This holds good also in conditional censures ; in these the jurisdiction of the lower prelate is checked if the appeal be made before the condition is fulfilled ; but not otherwise.

(4) In matters concerning visitation and the correction of morals we must distinguish. The bishop may proceed extra-judicially or judicially. In the first case an appeal, whether from a final or a quasi-final sentence, is only *in devolutive* ; in the second case an appeal lies to the metropolitan *in suspensivo*.

(5) Appeals concerning laws are only admitted when they are shown to be unjust or against reason, *i.e.* of grave inconvenience.

(6) Appeals against diocesan laws are only *in devolutive*.

(7) In cases of notorious crimes no appeal is permitted against a sentence unless the crime can, in some way, be defended.

(8) Appeals against episcopal legislation concerning the cure of souls, the sacraments &c. are only *in devolutive*.

25. Appeals are allowed not only in the greater causes, but also in those of little consequence.

26. The clause (*q.v.*) *omni appellatione remota*, sometimes found in documents remitting cases to papal delegates, refers only to

appeals *in suspensivo*. It does not prevent appeals *in devolutive*, nor recourse to the Holy See.

### § 6. *The Appeal*

27. The appeal, as a rule, must be made in the presence of the judge *a quo*. The moral presence is sufficient.

28. From a definitive sentence, if the appeal be made immediately—that is, before the court rises—it can be established by word of mouth by such a phrase as, *Appello, Ad sedem apostolicam ibo*; but if the appeal be made after an interval of one or more days after the sentence has been given, it must be in writing. But in either case if the appellant begins his journey to the Pope for the sake of appealing, that has all the effect of a canonical appeal provided he start before the *fatalia* have expired, and that due notice be given to the judge *a quo* so that he may refrain from execution.

29. The *fatalia* (*q.v.*) within which time appeal can be made are a period of ten days. After that time completed the judge can proceed to execute his sentence.

30. Apostils (*q.v.*) are as a rule necessary in either judicial or extra-judicial cases. They should always be asked for, so that the responsibility of the refusal rests on the judge *a quo*. They must be asked for and granted within thirty days.

31. The length of time allowed by law for the prosecution and ending of an appeal is one year. But for a sufficient cause this period is sometimes extended to one year more.

### § 7. *The Course of the Appeal*

32. The S.C.E.R. (October 16, 1600) decreed :

(1) That metropolitans and other superior judges should not judge except in cases expressed by law ;

(2) And that appeals should not be received except in public documents containing the necessary facts.

33. No appeal can be received from one who is contumacious as long as he persists in his contumacy. He who is guilty of contempt of court never obtains a hearing.

34. Ecclesiastical censures cannot be relaxed or declared null by the judge of appeals until both sides are heard and the cause known. If the judge *ad quem* hold the censure to be just, he sends back the appellant to the judge *a quo* for absolution if it be asked for humbly with promise of amendment. If the superior judge hold the censure to be unjust, he himself can absolve the appellant ; but if the case be doubtful, it were more fitting to remit him to the

lower judge to be absolved within a certain short time ; though, even in this case, the judge *ad quem* can absolve if he wish.

35. In England by a decree S.C.P.F. (June 28, 1884) the following is the law in those dioceses where the Instruction S.C.P.F. *Cum magnopere* has not been introduced.

(1) 'As often as any cleric, after trial by the commission of investigation (*q.v.*), shall wish to lay an appeal against a sentence passed upon him by his ordinary, this appeal shall be made first of all to the metropolitan, who will submit to a second examination the process resulting from the first inquiry and will examine afresh the cause according to the method prescribed for the commission of investigation.

(2) 'To constitute a commission of investigation in the case of an appeal to the metropolitan, three assessors will be chosen, to be selected from seven priests nominated for this purpose by the bishops every year in their meeting after Easter.

(3) 'From the sentence of the metropolitan it shall be always lawful to appeal to the Holy See according to the decrees of the Sacred Canons.

(4) 'In case of an appeal, the acts of both the first and the second investigations are to be sent to Rome in writing.

(5) 'If the first investigation should take place in the metropolitan diocese and the priest thereof be a subject of the archbishop, the second investigation shall be made by the senior suffragan, who will consult the assessors of the commission of investigation of that diocese.'

36. From that decree it would seem :

(1) That any cleric can appeal, and that the diocesan commission of investigation is not restricted to missionary rector (*q.v.*).

(2) That the cases within the competence of the commission are not only those concerned with deprivation of a rector.

(3) That as it is provided that every case be tried twice in England before an appeal is allowed at Rome, the practice of appealing to Propaganda without awaiting the archbishop's (or senior bishop's) judgment is against the spirit of the decree.

(4) That the archbishop is bound to receive the appeal, *servatis servandis*, and that the due machinery exists for the purpose.

(5) That he has his own court or commission and also his metropolitan court.

(6) That in cases of appeal he cannot act extra-judicially, but he is bound to use the metropolitan commission for the purposes of the second investigation.



(7) That the process of the lower court has to be submitted to him, and the case must be examined afresh.

37. In countries subject to Propaganda (*q.v.*) the appeal to the Holy See has to be addressed to the Pope through the Sacred Congregation, which proceeds to deal with the case in a summary manner. It is not the custom of this Congregation to allow advocates to plead before it ; but, as it wishes to have every information and to arrive at a just verdict, both sides are allowed to approach the Sacred Congregation. All documents have to be in Latin, Italian, or French, duly drawn up, signed, and dated.

38. In the United States two methods of trial before the metropolitan court obtain :

(1) Where the instruction of S.C.P.F. of July 10, 1878, is still in force, the archbishop or his vicar-general sits as judge and the commission of investigation as assessors, to whom belongs exclusively the trial or investigation of the appellant's case.

(2) Where the new instruction of S.C.P.F. *Cum magnopere* of 1884 is in force, the metropolitan court consists of the archbishop, his vicar-general, or other person delegated as judge, the diocesan prosecutor and the secretary.

39. The expenses of the appeal, as a rule, have to be borne by the unsuccessful party. *See* EXPENSES.

### § 8. Appeals to the Civil Power

40. The appeal *ab abusu* is a recourse to the civil power for protection against abuses (*q.v.*) in the jurisdiction of ecclesiastical superiors.

41. Such appeals are generally speaking null and void ; for the Church within her own province, that is in ecclesiastical and spiritual matters, claims to be a perfect and a supreme society independent of the civil power. She has her own machinery for dealing with abuses. The Vatican Council declares that it is not lawful for anyone to sit in judgment upon the sentences of the Apostolic See. Cases are recognised when it may be lawful to appeal to the civil power against grievances inflicted by lower ecclesiastical judges ; *e.g.* when a metropolitan will not or cannot afford relief, and there is a moral impossibility of recourse to the Holy See. In such a case it may be lawful to appeal to the civil courts to insist upon a new ecclesiastical trial.

42. In the case of clerics having complaint against their bishop for injustice, the question becomes practical. We must distinguish between :

Sess. iv.  
cap. 3

Soglia,  
p. 344

(1) Matters purely ecclesiastical, and  
 (2) Matters temporal, such as debts and rights of property.  
 Now in matters purely ecclesiastical an appeal *ab abusu* to the civil courts is null and void. As regards matters purely temporal, it used to be against the law to seek redress in the civil courts; but now by custom to the contrary, where this law is no longer in force, clerics are allowed to bring into the civil courts the *causae mixtae*, that is concerning ecclesiastical persons and temporal things. For the S.C.P.F. in a decree 2 September, 1837, says in non-Catholic countries redress can scarcely be obtained outside the civil courts.

43. Moreover clerics can sue one another in the civil courts in matters temporal, but not in matters purely ecclesiastical.

44. But by an instruction of the Holy Office (January 23, 1886) it is laid down that before any such appeal to the civil court in such matters against a cleric *in forma laicorum* the leave of the bishop must be obtained. The bishop ought not to refuse this leave, especially if he fail in reconciling the disputants. If anyone wish to bring a bishop before the civil court, it is not lawful to do so without asking the leave of the Apostolic See. Penalties and, in case of a cleric, censures *ferendae sententiae* may be incurred, if the bishop judge it expedient, in either case, by those who act without the necessary leave unless excused by ignorance.

45. From the above it will be seen that even laics bringing clerics before the civil courts for temporal matters should ask the leave of the bishop; and if they act otherwise it is left to the discretion of the bishop to punish them with penalties and censures *ferendae sententiae*. But in no case do they or clerics come under the excommunication *latae sententiae* of the clause *Cogentes (q.v.)* of the Constitution *Apostolicae Sedis*.

46. The leave of the bishop is required out of reverence to his authority, and to give him the opportunity of conciliation if possible.

47. The S.C.P.F. declared (May 17, 1886) that it would never admit an appeal or recourse of priests who take clerics before the civil courts without the ordinary's leave, or a bishop without the leave of the Apostolic See, until they have withdrawn the case from the lay tribunal.

48. The III. Plenary Council of Baltimore (n. 88) requires the leave of the bishop to be in writing, and especially forbids priests to sue laics in the civil courts for debts due to the Church unless they have the bishop's leave in writing.

## APPROBATION

1. Approbation is an authentic judgment or declaration of the fitness and sufficiency of a priest to hear confessions, made by one having episcopal or quasi-episcopal power.

2. Hence it is clear that approbation is not the same thing as collation (*q.v.*) of jurisdiction (*q.v.*). These two differ in this respect : *approbation* is an act of the intellect, a judgment ; *collation* of jurisdiction is an act of the will, by which a superior gives power to hear the confessions of his subjects. Hence collation necessarily implies approbation, but it is a common opinion that approbation can exist without jurisdiction.

SESS. 23,  
c. 15, *d. 7.*

3. The Council of Trent says : ‘ Although priests receive in their ordination the power of absolving from sins, nevertheless the Holy Synod ordains that no one, even though he be a regular, is able to hear the confessions of seculars, not even of priests, and that he is not to be reputed fit thereunto, unless he either hold a parochial benefice or be, after an examination if they shall think it necessary, or in some other way, judged capable, by the bishops, and has obtained their approval, which shall be granted gratuitously, any privileges and customs whatsoever, though immemorial, to the contrary notwithstanding.’

4. Hence the approbation of the ordinary is required for absolving seculars.

5. Approbation is acquired either expressly or tacitly, *i.e.* by examination or by appointment to some office which implies ordinary jurisdiction.

6. Approbation may be without limits as to time, or *ad beneplacitum*.

7. Approbation does not expire on the death or removal of the giver. But it can be recalled by his successor, who can also reduce it to a limited time.

8. But before the expiration of a limited time approbation cannot be revoked *sine causa*, nor can its renewal be refused *sine gravi causa*.

9. For regulars the bishop’s approbation is necessary when it is a question of hearing the confessions of seculars ; but within the monastery the approbation of the abbat or regular prelate is sufficient. In either case the Roman Pontiff is held to give the actual collation of jurisdiction.

10. Approbation may be given by a bishop elect and confirmed though not yet consecrated ; also by officials who hold quasi-episcopal jurisdiction, such as vicars general and vicars capitular ;

also for their subjects by abbats and priors of independent houses, generals and provincials.

11. Approbation must come from the bishop of the place in which the confessor hears confessions ; hence approbation is to be sought from the ordinary of the confessor, not from the bishop of the penitent.

12. The bishop if he wish can call priests already approved to undergo a new examination, even if they be parish priests, provided there be a prudent suspicion of their lack of knowledge from new grounds of proof received even extra-judicially. But if these grounds are wanting, parish priests cannot be re-examined by the bishop who approved them ; but his successor can make them submit to a fresh examination.

13. Regulars once examined and approved cannot be re-examined by the same bishop ; but his successor (not the vicar capitular) can order them to be examined again unless they have received unlimited approbation. The S.C.E.R. (July 2, 1587) and Clement X. in his Constitution *Superna* desire that regulars should be approved without limitation of time ; but a bishop granting faculties to regulars, as to seculars, from year to year, *non excedit terminos juris* (S.C.C. Sept. 4, 1875).

14. A priest approved in one diocese is not thereby approved for another, and in each other diocese he requires new approbation.

15. A bishop out of his diocese cannot choose as his confessor one who is not his subject and is not approved by the local ordinary. But he can approve one of his own subjects.

16. Bishops can give approbation when they are out of their dioceses ; for such grants are not acts of contentious jurisdiction.

17. Parish priests who give up their benefices cannot hear confessions without new approval unless they had received it without limits of time. But while parish priests they can hear their parishioners anywhere, even out of their own diocese.

18. British military chaplains receive their approbation from the Archbishop of Westminster, who, as delegate Apostolic *ad hoc*, is their immediate ecclesiastical superior, and bestows on them a delegated jurisdiction in all cases.

19. Besides the ordinary laws respecting approbation (*q.v.*) the Church has special regulations for those who act as confessors to nuns. Hence these require a special approbation.

20. A confessor approved for one convent requires another special approbation before he can hear confessions in another ; so the case of each convent requires special approbation.

Gregory  
XV. in  
Consti-  
tution *In-*  
*scrutabile*

S.C.E.R.  
4 May,  
1696

21. This applies to regulars as well as to seculars, even when the former belong to the same order as the nuns.

22. In the case of extraordinary confessors (*q.v.*) the special approbation is needed in every case.

23. A regular presented as confessor to nuns subjected to his order ought either to be absolutely rejected or to be approved of for three years, not for a shorter time.

### ARBITER

1. An arbiter is a person to whose judgment and decision matters in dispute are referred. He ought to be disinterested and indifferent, incorrupt and impartial.

2. He holds his position either by prescription of law, *ex iure*, or by agreement of the parties. Hence in law there are two kinds recognised :

(1) One necessary, *arbiter iuris*.

(2) One voluntary, *arbiter compromissarius*.

3. The two kinds greatly differ :

(1) The *arbiter iuris* is compelled to undertake the office ; but the *arbiter compromissarius* is free to undertake the office, though he is bound to finish what he undertakes unless any grave necessity or impediment supervene.

(2) The sentence of the *arbiter iuris* can be appealed from ; but there is no appeal from the decision of the *arbiter compromissarius*, for the parties have freely chosen him and have bound themselves to stand by his decision. Hence, properly speaking, there is no appeal unless there be manifest injustice in the decision ; then an appeal can be made to the judge to rectify the sentence.

(3) The *arbiter iuris* has coercive power (*q.v.*) over all, and can examine and punish ; but the *arbiter compromissarius* can only take cognisance of the case, and his powers and duties are defined, conferred, and imposed by the submission of the parties to his arbitration.

4. The powers of the arbiter date from the time of the agreement to refer being signed by all the parties ; and they end as soon as he has published his award, or by lapse of time, or by agreement, or by death of either party or of the arbiter.

5. There is in law a difference between an arbiter and an arbitrator :

(1) The arbiter is obliged to judge according to the law ; while an arbitrator is at liberty to use his own discretion and accommodate

the difference in the manner that appears most just and equitable.

(2) Again, an arbiter is concerned with a *lis* ; an arbitrator with contracts.

(3) An arbiter is obliged to observe due procedure ; an arbitrator acts extra-judicially.

(4) No one can be an arbiter in his own case ; but anyone can act as arbitrator provided he acts justly.

(5) The sentence of the arbiter is called *arbitrium* or *laudum* ; the sentence of the arbitrator is called the award or *arbitramentum*.

6. The difference between an *arbiter iuris* and a judge consists principally in this, that the *arbiter iuris* has neither ordinary nor delegate jurisdiction (*q.v.*), but quasi-ordinary, as it comes not from the fount of authority, but from the agreement of the parties.

7. Clerics cannot act as arbiters in matters which concern ecclesiastical property without leave of the ordinary, especially in matters which are to the prejudice of the Church.

8. Laics alone cannot be elected arbiters or arbitrators in spiritual causes ; but they can be parties to friendly compositions. Ecclesiastical authority can join laics with clerics in spiritual causes. They can act also in the civil causes of clerics and in matters concerning temporals.

9. Arbiters or arbitrators can be in any number, one, two, or three, or more. It is better, if a single person be not chosen, to make the board to consist of an unequal number. If two only be chosen, it should be on the condition that if they do not agree on a decision some third person named in the agreement should be elected, who, hearing both arbiters, should pronounce a sentence which they are bound to accept.

10. The arbiter or arbitrator takes cognisance not only of the matter in dispute, but also of accessory matters which may be necessary for elucidating the question.

11. The arbiter can bind the losing party to pay the expenses. He can also before undertaking office arrange the terms of his own remuneration.

12. The award or decision must be given in the presence of both parties, and at a day, hour, and place duly specified, unless in the articles of compromise it is specially mentioned that the award can be given in the absence of either party or by letters to both.

13. All things can be made matter of arbitration unless they are specially forbidden by law, for : *Quod non prohibetur expresse per consequentiam admittitur.*

14. The causes removed from arbitration are :

- (1) Criminal cases, *criminaliter intentatae*.
- (2) Causes concerning the liberty of the subject.
- (3) Matrimonial causes, properly so called.
- (4) Causes of restitution *in integrum*.
- (5) Causes in prejudice of the Church.
- (6) Causes of appeal against definitive sentences.
- (7) Causes reserved by law to the supreme courts.

15. There are three pleas for appeal against an unjust award :

- (1) *Dolus*.
- (2) Manifest and evident iniquity.
- (3) Undue injury.

### ARCHBISHOP

1. An archbishop is one who has a higher grade in the episcopal hierarchy than a bishop.

2. There are archbishops who hold a titular see, and there are residential archbishops but without suffragans ; and finally there are archbishops who have, in act, suffragan bishops. These last are called metropolitans (*q.v.*).

3. The laws concerning titular archbishops are the same that regulate titular bishops (*q.v.*), with the following additions : titular archbishops do not apply for the pall (*q.v.*), they cannot have the cross borne before them, and they take rank among other archbishops.

4. Residential archbishops who have no suffragans are immediately subject to the Holy See. They have the pall and all the honorific privileges of archbishops. As a rule it is arranged that they have a seat in the councils of the nearest province. In the British Isles we have only one example of such an archbishop, viz. the Archbishop of Glasgow.

5. For archbishops who have suffragans and therefore in act have metropolitan jurisdiction, *see under* METROPOLITAN.

### ARCHDEACON

1. An archdeacon is a ministerial functionary recognised by the Council of Trent, and of ancient usage in England and many countries.

2. He is the vicar of the bishop in all things within the limits of his archdeaconry, and De Luca says he is the *vicarius natus* in temporals.

3. The Rota decided that the archdeacon has by law a perpetual vicarship and ordinary jurisdiction.

4. Innocent III. refers to the ancient description of archdeacons as the *oculi episcopi*; and he says that the archdeacon's duty is to go through the diocese and to correct and emend what he sees needs correction or emendation.

5. The Council of Trent says: 'Archdeacons, who are called the eyes of the bishop, shall, in all churches, where it is possible, be masters in theology or doctors or licentiates in canon law.'

6. The archdeacon has precedence over the archpriest, and according to old English usage has the title of 'The Venerable'; but he comes below the vicar general.

7. The archidiaconal functions are:

(1) To instruct the clergy in their duty.

(2) To make periodical visitations of the archdeaconry. Where archidiaconal visitations have fallen out of use, they might, if it seem well, be revived with great advantage if they were to take place a year after the bishop's visitation with the object of seeing that his decrees be duly carried out and of investigating what may need special attention.

(3) When the archdeacon is the first dignitary of the chapter (*q.v.*), to him belongs *nomine capituli* to arrange the services, distribute the lessons, unless by custom this appertains to the precentor (*q.v.*), &c., also to fulfil the part laid down in the Roman Pontifical for the archdeacon at ordinations.

(4) By the Council of Trent the archdeacon can only hold his visitation with the consent of the bishop, and must exercise the right in person assisted by a notary. He is bound within a month to give to the bishop an account of the visitation, 'and to show him the depositions of witnesses and the proceedings in their entire form; any custom, even though immemorial, and any exemptions and privileges whatsoever notwithstanding.'

(5) It is his office to give corporal institution (*q.v.*) to benefices and dignities in his archdeaconry.

8. Attention has to be paid to local customs; for it has been very properly said that archidiaconal powers come rather from custom than from law. Hence the distinction between an archdeacon and a vicar general (*q.v.*).

9. There may be one archdeacon for the diocese or several, each with his own allotted district or archdeaconry.

10. He is the immediate superior of his clergy, and appeals lie from his sentence, judicial or extra judicial, to the bishop's court.

XI. dec.  
160, n. 22,  
and xiv.  
dec. 189,  
n. 18 and  
19, in cap.  
*ad hæc* 7  
*De Officio*  
*Archidiaconi*  
Sess. 24,  
c. 12, d. 7.

Sess. 24,  
cap. 3, d. 7.



He has under him the rural deans, and he visits in turn the churches of their deaneries.

### ARCHIVES

1. Every province, diocese, and church should have a proper archive for the safe custody of all official documents.

2. There are many cases provided by law where the rector of a church has to make two copies of a document, one to be sent to the episcopal archives and one to be kept in his church.

3. Among the documents to be made in duplicate should be all grants or licences from the Holy See ; all foundations and trusts, with a list of the obligations if any ; all documents of a civil nature affecting the Church, such as deeds and leases, &c. ; inventories.

4. The Westminster Councils say :

I. West.  
xiv. 7

(1) ' Every bishop should have a keeper of the archives, and it will be his duty to take charge of all papers and documents that have reference to the diocese ; and he should take copies of them in case the originals should fall into other hands. Moreover he should have a complete list of them all.'

IV. West.  
x. 10

(2) ' At every mission there should be a chest or place for the archives, of sufficient size and security ; and in it should be kept all the books and other documents relating to the mission. In accordance with the First Council of Westminster, books of those baptised should be kept as carefully as possible, and preserved, note being taken when the baptism is conditional ; likewise of those confirmed, and of the dead, as well as those married, and if possible there should be also a book of the burials. The rector of the church has the duty, by virtue of his office, of keeping the archives, though he may assign it to another ; he, however, will have to bear the responsibility both of filling up the books and of the custody of all things consigned to the repository of the archives. In this repository should be placed and carefully kept all the decrees of provincial and diocesan synods, a complete series of the bishop's pastorals, and copies issued by the ordinary of all instructions of that nature.'

5. The National Council of Maynooth (1875) orders that each bishop should erect and constitute in some safe and handy place an *archivium* in which shall be kept all documents regarding the history and origin of the diocese, all documents belonging to matrimonial dispensations, controversies and judgments, provisions of benefices, unions and divisions of parishes, privileges and indulgences to the diocese, cathedral or parochial churches, and whatever appertains in

any way to the right administration of the diocese. The care of the archives is to be committed to two priests, who are to be instructed in the bishop's will faithfully to consign the documents to his successor. And the National Council declares that anyone who violates, steals, or suppresses any document in the archives is, if a cleric, to be deprived of all dignity, office, and benefice, and to incur inhability *ad futura obtinenda*; and if a layman, he incurs excommunication *ipso facto*.

Cap.  
xxviii.  
§§ 266-  
269

### ARCHPRIEST

1. The archpriest is the first among priests. Sometimes he holds an office in the chapter; and then he usually comes after the archdeacon.

2. There are two kinds recognised :

(1) Urban, and

(2) Rural or vicar-foran (*q.v.*).

3. His office, which is akin to that of a superior over a deanery, is to take charge, according to the tenor of his appointment, of the priests and people in his district.

4. As archdeacons assist the bishop in things appertaining to the diaconal or ministerial office, so does the urban or capitular archpriest in matters belonging to the priestly office. Hence the archpriest is the bishop's vicar in celebrating Divine service; and, according to De Luca, he is the bishop's *vicarius natus* in spirituals.

5. The rural archpriest, vicar-foran, or rural dean has only a subordinate jurisdiction dependent upon the bishop or vicar general or archdeacon, who has cognisance of the graver causes.

6. The archpriest of basilicas &c. has only a paternal and economic authority in matters pertaining to the service of the Church and to the discipline and morals of those attached by office to the Church.

### ASSESSORS

1. Assessors are those who are appointed to sit with the judge in order to help him by their counsel in forming his judgment. They are also called *consilarii*.

2. By common law ecclesiastical assessors have no jurisdiction, as their office is only to advise the judge.

3. But by particular law a bishop can impose upon his vicar general the obligation of following the advice of his assessors; but if this condition be made universal it is tantamount to removing the official from his position of ordinary judge and making him

a mere delegate. The best way out of the difficulty, if the vicar general be not a canonist, is to appoint a judge for the *curia*.

4. According to common law the judge is obliged to receive the advice of his assessors ; but he is not bound to follow it.

5. The bishop may, in criminal cases, oblige his vicar general to follow the advice of the assessors, who, in this case, are rather to be considered as associated judges than mere advisers.

6. Any judge, unless custom or the prohibition of his superior intervene, can make use of assessors, who, nevertheless, may be rejected by one or both of the parties as suspect.

7. Laics can be assessors provided that no spiritual jurisdiction be given to them.

8. In England and the United States the members of the commission of investigation are assessors or counsellors of the bishop ; their advice is an essential part of the proceedings. It has to be inserted in the authentic records of the acts of the commission, and has to be considered by the metropolitan in case of appeal. Hence, as true assessors, the individual members of the commission may be challenged as suspect of bias or otherwise unfavourably prejudiced against one or both of the disputants ; but the grounds of suspicion must be proved, not presumed.

## ASSISTANCE

1. Assistance is part of that ceremonial attendance on the bishop due at certain times and places by the chapter as a corporate body.

2. It is to be performed according to the Ceremonial of the bishops.

3. The first dignitary has to assist in cope when the bishop celebrates pontifically. If he refuse, he can be compelled by penalties and censures. While assisting the bishop, whether in the cathedral or other church, he is accounted as keeping choir.

4. The assistance of the canons is always the right of the bishop whether he celebrates or only assists at the Divine offices.

5. Assistance belongs only to the ordinary of the place.

6. Assistance is to be given by the last of the canons where there are no diaconal or subdiaconal prebends ; and during assistance they take precedence of others.

7. Assistance is also due at the throne by two dignitaries or canons ; *digniores et honoratiores*.

8. The chapter is bound to give assistance to the bishop not only in the cathedral but in other churches of the episcopal city when

he goes publicly to exercise pontifical functions, provided that a sufficient number of canons be left for the service of the choir.

9. The chapter also gives assistance in collegiate and parish churches ; and even in exempt churches of the diocese, when they assist *capitulariter*.

10. The chapter also provides the assistance at ordinations, whether mass be said or sung.

11. The chapter are also bound to provide assistance to a suffragan or auxiliary bishop when he, in the name of the diocesan bishop, exercises pontificals ; but in this case there are no deacons of honour at the throne.

12. When the bishop is absent and the first dignitary celebrates in his place, two canons have to assist as deacon and subdeacon respectively, and a third as assistant priest.

### ATTENTION

1. Attention is an act of the intellect by which a man considers that which he does.

2. Attention differs from intention, for this is not an act of the intellect but of the will, *circa finem*.

3. Attention is twofold, internal and external :

(1) *Internal* attention is advertence of the mind, and an application thereof to what is being done or said.

(2) *External* attention is that by which nothing is done outwardly which is incompatible with internal attention.

4. Internal attention as regards vocal prayer (e.g. in the recitation of the office in choir) is threefold : superficial, literal, and spiritual ; or as directed to the due, distinct, and reverent pronouncing of the words, or to their sense, or to God as to the object of prayer. Each of these three kinds of attention can be *actual*, *virtual*, or *habitual*.

5. For satisfying the law of reciting the office in choir or privately, of hearing or celebrating mass, not only external but internal attention is required according to what St. Alfonso says is the more probable opinion ; but he also considers that the contrary opinion is *satis probabilis*. Hence he dares not condemn to restitution a beneficed cleric who in good faith recites his office with voluntary distraction and also in good faith receives the fruit.

### AUDITOR

1. Auditors are officials of an ecclesiastical *curia* who are commissioned to hear causes in part or in whole, but cannot pronounce

a sentence. They are the preliminary judges of investigation, and report to their superior, who pronounces the definite sentence.

2. They have a delegated jurisdiction, and can summon the parties and examine witnesses ; but, unless specially authorised to, they cannot pronounce sentence.

3. According to common law the judge is not obliged to have an auditor, for he can hear the cases himself if he so wish ; but in every way it is more convenient that an auditor, trained in law and skilled in evidence, be appointed, whether the bishop or the vicar general preside in the episcopal court (*q.v.*). Sometimes such an appointment is necessary for the sake of justice, especially in two cases :

(1) When the judge, either bishop or vicar general, is no canonist.

(2) When the number of cases is too great to be expedited by the bishop or vicar general.

4. As bishops can have auditors, so can the archbishop for his metropolitan court (*q.v.*). An auditor forms part of the official staff of an Apostolic delegate (*q.v.*).

5. Appeals (*q.v.*) lie from an auditor :

(1) When he acts as a judge proper, and

(2) When he is suspected with justice by the parties.

6. The commission of investigation (*q.v.*) in England and the United States exercise in some respects a function analogous to that of auditors ; but it is a question whether an auditor properly qualified would not be more satisfactory than men who may not be trained in legal procedure.

### AUTHENTICATION OF RELICS

1. By common law a bishop, in the exercise of his ordinary jurisdiction, can authenticate relics, so that they may be lawfully exposed to the veneration of the faithful.

2. In performing this office it is necessary that bishops should proceed with the greatest caution and after mature consideration.

3. The Council of Trent decreed that in this matter bishops should make use of the advice of theologians and of other pious persons. It would seem that among the latter should be included those who are trained experts in history and archaeology.

4. If any greater difficulty arise, the question is not to be decided before the metropolitan and his suffragans have given sentence in a provincial synod.

5. The bishop must take care that the relics which are to be

authenticated are such as can be exposed fittingly to the veneration of the faithful.

6. He must also remember that only the Pope can give leave for public veneration of relics of persons not yet canonised or beatified.

7. He must inquire as to the identity of the relic, *i.e.* that it really belongs to the saint to whom it is ascribed. The certitude necessary is to be deduced from a solid foundation, such as, while not infallible or altogether convincing, should nevertheless exclude practical doubt of the opposite conclusion. Such certitude, however, may exist together with scruple, suspicion, or even fear.

8. Among the principal proofs relied upon are: tradition or the veneration by the Church for a long time; the testimony of pious persons worthy of faith and beyond exception; one such document is enough, or the writing that is found with the relics; and miracles which are done or have been done through their instrumentality.

9. Relics which are recently discovered or produced for the first time cannot be exposed to the veneration of the faithful until they have been duly authenticated and approved.

10. Benedict XIV. holds with many other canonists that bishops cannot translate the bodies of the saints or principal relics from one church to another without the leave of the Holy See. It is a species of alienation (*q.v.*).

## AUXILIARY BISHOPS

1. An auxiliary bishop is one who is appointed by the Pope to assist an ordinary bishop in the exercise of the duties arising from the episcopal order.

2. Hence he differs from a coadjutor bishop (*q.v.*), who assists the bishop in the administration of the diocese.

3. An auxiliary bishop is always a titular bishop (*q.v.*), and has the rights of one, besides whatever other privileges may be granted to him by the ordinary.

4. He is usually appointed at the request of the bishop who wants his services. The consent or advice of the chapter or of the diocesan consultors is not required, but only the recommendation of the ordinary.

5. He is usually appointed for the following reasons:

(1) When the bishop does not, for some lawful reason, reside in his diocese.

intention (*q.v.*). An adult can be *lawfully* baptised when he is properly disposed; that is, when he has faith, repentance, and intention of receiving baptism. This last condition applies also to the validity of the sacrament. Hence if this necessary intention is wanting, an adult cannot be baptised; if it be doubtful whether he have the necessary intention, then he must be baptised conditionally: *si capax es*. If faith and repentance be certainly wanting, it is not lawful to baptise an adult; but if the intention be certain, but faith and repentance be doubtful, then, in danger of death, such a one should be baptised, at least, conditionally.

S.C.I.  
25 Jan.  
1703

4. Children of Catholic parents are the lawful subjects of baptism.

5. As regards those whose parents are non-Catholics, we must note:

(1) If the parents are *unwilling*, the children can only be baptised:

a. If they are in danger of death.

b. If they are wholly out of the power of their parents and there is hope of a Catholic education.

c. If the parents are in slavery to a Christian master who consents to the baptism.

S.C.I.  
12 Oct.  
1600

(2) If one of the parents is Catholic the children can be always baptised unless it be certain that they are going to be brought up non-Catholics.

(3) In all other cases two things have to be regarded:

a. The right of the Church to the children of non-Catholics.

b. The hope of a Catholic education.

As regards the former, it is well to note that right is one thing, and the use of that right is another; hence the Church does not allow such baptisms except in danger of death and where there is a reasonable hope of a Catholic education. The consent of the parents is not sufficient; there is also required a just and reasonable prospect of the child being brought up a Catholic.

S.C.I.  
28 Jan.  
1637;  
26 Aug.  
1885

6. As regards children not yet born the *Rituale Romanum* lays down the law in tit. *De Baptismo*: *Nemo in utero matris clausus baptizari debet*. It is necessary that the water should flow *directly* over some part of the child. Hence if the infant be *omni-clusus* he cannot be baptised even conditionally. In all other cases, if the body or any part of the body of the child can, in any way, be got at *directly*, he ought to be baptised at least conditionally.

The same applies to the living child or to the probably living child of a dead mother. But on this matter the Holy Office February

15, 1780, and December 13, 1899, expressly forbids priests in such cases either to demand the necessary sanction for the operation or to perform it. They can advise those concerned to provide for the safety of the child provided that the civil laws are observed as far as is necessary.

7. Absolute baptism can never be repeated; but when there be doubt as to any essential, it can be repeated conditionally. This reiteration has no place when the doubt refers to the *lawfulness*. It is only allowed when there is a doubt as to the *validity* of the previous baptism. The general rule is that conditional baptism is only lawful when there is a prudent or probable doubt as to the validity of the previous ceremony. Besides the case concerning baptism of an unborn infant, in every other case a particular and strict inquiry is needed; for if the sect provides a sufficient formulary for baptism and holds the Catholic doctrine concerning this sacrament there is a probability in favour of the validity of the previous baptism; and the danger of incurring sacrilege can only be avoided by a reasonable investigation in each case. The Holy Office refused to allow the doctrine that in every case of the conversion of a heretic conditional baptism should be used. This is only allowed when after an investigation there still remains a probable doubt as to the validity.

H.O.  
20 July,  
1859;  
20 Nov.  
1878

20 Nov.  
1878 .

8. Infants that are found exposed should, if in danger of death, be baptised conditionally. In other cases diligent inquiry is necessary.

9. The Holy Office decreed that baptism should be administered as soon as possible, and allows nurses to administer it when they fear positively danger that the child may die.

13 Jan.  
1899

10. The church is the place for baptism, and only two exceptions are allowed by law :

(1) The children of kings and great princes may, by request, be baptised in private oratories.

(2) In case of necessity a child may be baptised anywhere.

The S.C.C. allow bishops for reasonable causes to make other  
s. 'ptions.

20 Jan. &  
14 April,  
1894

11. Leo XIII. allowed baptism without the solemnities to be conferred during a sea voyage, with the obligation of giving, at the earliest opportunity, a certificate of the baptism to the parish priest of the parents of the child.

24 Mar.  
1896

12. One of the effects of baptism is the contraction of spiritual relationship (*q.v.*).

13. The First Council of Westminster has these decrees :



‘As among Protestants there is no dogma which has been more corrupted in these times [1852]<sup>1</sup> than that regarding the baptismal regeneration of infants, on this account it is the more necessary that the sound and clear doctrine of the Church in this matter be lucidly and frequently explained. Moreover, so great a sacrament ought to be administered with the greatest decorum. Wherefore we command that the following directions be observed :

‘(1) In every church to which is annexed the cure of souls there shall be a baptismal font, unless the bishop dispense with it for a time. This font should be placed in a conspicuous and convenient situation, and the baptismal water always kept in it. It should be becomingly ornamented, kept locked, and, if the situation will permit, be surrounded with rails. We therefore recommend that the rules for the safe keeping of the font, published by St. Charles Borromeo, be observed. We also admonish all that, except in case of necessity, baptism is not to be administered with unblest water, nor with water blessed for other sacred purposes, in accordance with the Constitution of Benedict XIV. *Inter omnigenas*, § 10. It should be noticed also that where there are parish priests or missionary rectors appointed, the administration of solemn baptism belongs to them ; and it is only by their permission that other priests can baptise solemnly.

‘(2) The oil of catechumens and the holy chrism, and, if it be thought proper, the salt also and all other requisites for the administration of baptism, must be kept by themselves in the baptistry or in the sacristy with all reverence and with the greatest cleanliness. When new churches are built, a place should be prepared for their reception in the baptistry.

‘(3) The priest also should keep in the sacristy, carefully and safely, the baptismal register, in which are to be entered, according to the prescribed form, the names of the persons baptised and the names of the godfather and godmother, so that uniformity in the keeping of baptismal registers may prevail throughout the whole province.

‘(4) Unless in the exceptional cases mentioned in the ritual, baptism ought always to be administered in the church, and never out of the church without leave of the bishop, except in case of danger of death or of great inconvenience. Baptisms conferred at stations, at a distance from the principal church or chapel, on

<sup>1</sup> At this time the Gorham judgment was agitating minds in England. It was held by the highest court in England that a clergyman of the Established Church of England who disbelieved in baptismal regeneration could retain his benefice.

occasions of the priest visiting them or when he is called thither, are excepted.

‘(5) Persons who are not Catholics and those excluded by ecclesiastical law must not be allowed to stand godfathers or godmothers : namely, persons under the age of puberty, persons excommunicated by the greater excommunication, persons who have not been confirmed, persons who do not fulfil the precept of paschal Communion, and ecclesiastics. On account of danger to the faith of infants, which may easily occur on the death of their parents, the priest should take care that, if possible, there are two sponsors.

‘(6) The priest may baptise infants born of parents who are not Catholics, provided that it is agreed that they be brought up in the true religion and that they have a Catholic godfather or godmother.

‘(7) [*The decree concerning conditional baptism of converts has been modified by recent legislation, ut supra.*]

‘(8) Conditional baptism must not be administered publicly but altogether privately, with holy water and without the ceremonies. [*The necessity in every case of sacramental confession is laid down in the newer legislation.*]

‘(9) Since Catholic mothers are frequently attended by medical men or midwives who are not Catholics and care nothing about the baptism of infants in danger of death, the faithful of both sexes must be carefully instructed as to the manner of baptising in cases of necessity as they are called, so that no child may depart this life without the saving laver of regeneration. Should the child recover, it must be brought to the church, that the ceremonies may be supplied. The priest, however, should make diligent inquiry into the way in which the baptism was administered, and in coming to a decision he should rather incline to the safer side, and should he think proper<sup>1</sup> he need not hesitate to confer conditional baptism.

‘(10) Parents should be frequently admonished not to put off the baptism of their children, but to be careful that, as soon as they are born into the world, they may be born again to eternal life.’

14. The Maynooth Synod (1875) decreed :

‘(1) Conditional baptism is to be given to those who in our country are converted to the Catholic religion, for it is often the case that among *Protestants* there are those who attach no value to baptism or who administer it without observing the due matter and form. Hence we will this use to be retained unless it is plainly

<sup>1</sup> There should be, of course, a reasonable and prudent doubt.

certain by witnesses worthy of belief, that the person in question was validly baptised' [n. 39].

' (2) Priests are forbidden, under pain of suspension, *latae sententiae*, to refuse to baptise a child without any offering' [cf. 40].

## BAPTISM AND MARRIAGE

1. As marriage between baptised persons is a sacrament, it is sometimes doubtful in English-speaking countries whether the non-Catholic party be baptised or not.

2. The following doubt was submitted to the Holy Office :

Are Calvinists and Lutherans living in those parts where baptism is a matter of doubt and suspicion, to be regarded as infidels, so that between them and Catholics the impediment of religion should be considered diriment ?

17 Sept.  
1830

And the Holy Office decided :

(1) As to non-Catholics whose ritual prescribes baptism, but without the requisite use of the essential matter and form, each special case must be examined into.

(2) As to those who in compliance with their ritual baptise validly, the baptism is to be deemed valid.

(3) But if it be well known that the custom of any sect is against any baptism, the marriage is null.

## BASILICA

1. Basilica is a title given to the greater churches, which invests them with special privileges.

2. There are two kinds of basilicas :

(1) The greater basilica, among which are, at Rome *Sanne* Lateran, the Vatican, St. Mary Major, St. Paul *extra muros*; and St. Lawrence *extra muros*. In these the Pope has his altar. Elsewhere there are greater basilicas, *e.g.* at Assisi.

(2) The lesser basilica, which is made so by a special grant of the Pope.

22 May,  
1817;  
27 Aug.  
1886

3. The privileges of basilicas are defined by the S. C. C. R. .

(1) Basilicas have precedence as churches, and among themselves rank by order of concession. But the cathedral in any place ranks higher than a minor basilica.

(2) They have certain *insignia*, viz. the *conopeium*, a kind of umbrella of state made of red velvet and cloth of gold for the

greater basilicas, and of red and yellow silk for the minor ones ; and the bell in an ornamental frame.

(3) The clergy of basilica form a college, have the right to the rochet and cappa in winter, with the rochet and cotta in summer.

4. The title of basilica is conferred in three ways :

- (1) By bull, which is the solemn form.
- (2) By breve, which is the ordinary way.
- (3) By rescript, which is exceptional.

## BEATIFICATION

1. Beatification is the act by which the Pope decrees the title of Blessed to one already acknowledged as a Venerable servant of God.

2. Beatification gives leave in specified places for public liturgical honours to be given to those who have been declared Blessed.

3. Beatification is a preparation for canonisation (*q.v.*). It implies that the servant of God has led a life of heroic sanctity, that at his intercession miracles have been worked after his death, and that he enjoys the rewards of heaven.

4. The process of beatification is as follows :

(1) The ordinary of the place where the servant of God died or is buried opens a formal court to receive juridical information on his life, reputation, and virtues. He also accepts evidence of any alleged miracles which have taken place before or after his death. The result of this local court of inquiry is then sealed and sent to Rome, to the Sacred Congregation of Rites, which is charged with such affair

(2) After a lapse of ten years the material so collected is submitted to a body of consultors for their opinion and revision. An official, called the Promoter of the Faith, is appointed to find out any and every objection, to which another official, called the Defender of the Cause, replies.

(3) Then, at the demand of the Postulator of the Cause, the cardinal, who is charged with the case, submits to the Pope the question whether the cause should be introduced among those awaiting judicial inquiry. If the Pope thinks well, the cause is introduced, and henceforth the servant of God is invested with the title of *Venerable*.

5. The Congregation of Rites then institutes a long and formal trial of the *venerable*, entering into minute points touching his life,

his reputation, and the reputed miracles wrought after his death. Expert opinion, medical and otherwise, is sought and scrupulously considered. This process may continue for years.

6. When at length all doubts have been met satisfactorily, a last session of the S.C.R. is held in the presence of the Pope, who decrees, if he judge well, that the process can proceed safely to beatification.

7. The ceremonial of the final act takes place in St. Peter's, where, after the reading of the decree, in presence of a large assemblage of cardinals, bishops, and others, a picture of the new *beato* surrounded by rays of light is unveiled, his relics are exposed on the altar of the Chair, the *Te Deum* is sung, and the invocation, with prayer of the *beato*, is chanted. This is followed by a Mass in his honour with appropriate prayer. In the afternoon the Pope descends into St. Peter's and prays before the relics.

8. This is the formal method of beatification. There is another recognised, viz. equipollent beatification. This consists of a formal confirmation of a continuous *cultus* which goes back to time immemorial—that is to say, at least a century—a fact that has to be proved by all kinds of evidence and by what is most important, viz. the knowledge of the Holy See. Urban VIII. in decrees of 1625 and 1634 has laid down the legislation.

9. The first step is for the ordinary to present a petition to the Pope to confirm the immemorial *cultus*. This petition should be reinforced by others emanating from illustrious persons.

10. The ordinary then opens his court to receive all the evidence that is possible on the fame of holiness and miracles, together with the fact of the immemorial and continuous *cultus*. The papers are forwarded to the Holy See, and an *avvocato* draws up a memorial based on the documents and presents it to the S.C.R. The matter is then submitted to the Promoter of the Faith, who makes his objection, to which the *avvocato* replies.

11. Any manuscript or printed works concerning the servant of God that are brought forward, in favour of or against the action, have to be authentically attested, dated if possible, and submitted to a most rigorous examination. Any pictures put into court have to be submitted to a careful examination to prove that they represent the person in question, and their date has to be fixed as far as possible.

12. Should the process satisfy all objections, then the Pope issues a decree of equipollent beatification which allows the title of *blessed* to be given to the servant of God, his picture surrounded

with rays of glory to be placed in the church, his relics to be presented for the veneration of the faithful, and altars or churches to be erected under his name. A further grant is necessary before his feast, with proper Mass and office, is granted.

13. There are many decrees of the S.C.R. concerning the cultus of a *beato*.

(1) His picture must not have the *nimbus* round the head, but only a luminous light.

(2) His picture may not be exposed in the church without an Apostolic indult; and even with this permission it is forbidden to place it on an altar.

(3) When the Mass has been granted, the picture can be placed on the altar and it is lawful to hang round it *ex-votos*.

(4) It is forbidden to strike medals of a *beato*, and these are incapable of being blessed or indulgenced.

(5) An indult is necessary for erecting an altar to a *beato*; and if granted this does not imply the concession of Mass and office.

(6) The permission of *cultus* has to be strictly interpreted, and does not include necessarily the recitation of the office.

(7) The concession made to one place cannot be extended to another. The feast cannot be celebrated without a special indult.

(8) The Mass can only be said by those in favour of whom the indult is granted.

(9) The name of the *beato* cannot be inserted in the calendar.

(10) The *beato* cannot be invoked in public prayer.

(11) The relics cannot be carried in procession, and they can only be exposed where the Mass and office are granted.

(12) Regular bishops are bound by these laws in regard of the *beati* of their order.

13) A *beato* cannot, without indult, be made the titular of a church.

(14) An indult is necessary before a *beato* be elected as patron of a locality.

N.B.—These rules are certain and absolute; in other words, the leave of the Holy See has to be explicit in every particular.

14. The S.C.R. has issued recently [1905] an instruction to vicars Apostolic about the process to be followed in the cause of martyrs.

(1) Either the vicar Apostolic himself, or a priest delegated by him, should act as judge after making the following oath, touching his breast if a bishop, or the book of the Gospels if a cleric.

*‘Ego N. N. in/ascriptus, tactis hisce sacrosanctis Dei Evangeliiis*

F

*coram me positus, iuro et promitto fideliter et diligenter adimplere munus mihi commissum circa constructionem Processus Informativi in causa Beatificationis et Canonizationis seu declarationis martyrii servi Dei (vel servorum Dei) N. N. ad formam decretorum S.R.C. et praesertim novissimorum, quae confirmata fuere a san. mem. Innocentio PP. XI., necnon iuro et promitto religiose servare silentium de testium depositionibus nec de iis loqui cum aliqua persona, excepto Actuario pro eodem Processu deputato, sub poena periurii et excommunicationis latae sententiae a qua nonnisi a Summo Pontifice (excluso etiam Maiori Poenitentiario) praeterquam in mortis articulo absolvi possim, et ita promitto et iuro : sic me Deus adiuvet et haec sancta eius Evangelia.'*

This oath is to be testified by the actuary or notary, and it shall be signed *M. N., vicarius Apostolicus*, or *M. N., Iudex deputatus*; and by a similar form the judge shall declare the lawful delegation of the actuary.

(2) The court being thus formally constituted, the witnesses have to be heard. The judge selects them, having previously instructed them about what is required of them as witnesses.

(3) The preliminary questions addressed to the witnesses are :

*a.* Their name, country, age, condition, religion, whether baptised or not, whether confirmed or not, whether they have always fulfilled the paschal precept.

*b.* Whether they have ever been submitted to a judicial inquiry; if so, concerning what; whether they were ever excommunicated or absolved from censures that had been merited.

*c.* Whether they knew the servant of God, by sight or by hearing, or by hearsay; whether they had ever conversed with him or not; whether anyone had instructed them what to testify, or whether they were moved to depose by anyone on account of ill will, &c.

*d.* Whether they venerate the servant of God and desire his beatification or not.

(4) After these preliminary questions, then the witnesses are to be examined concerning *the life* of the martyr, *e.g.* his birth, country, parentage, youth, the beginning of his career, any offices held in Europe, his setting out for the mission, his duties there, his journeys, and the conversions which he made.

(5) Then they are to be examined concerning the cause of the martyrdom, *ex parte tyranni*: that is, the cause and origin of the persecution; was it general or local; the edicts, if any; the beginnings of the persecution and the attendant sacrileges, robberies, dis-

persion or capture of the flock ; the hostile disposition of the populace. Witnesses are to be asked concerning the smallest circumstances : the words said, the deeds which they either saw or heard of, the edicts read or heard of, and other circumstances fully, abundantly, with each point made clear.

(6) Then they are to be examined as to the cause of the martyrdom, *ex parte martyris*, on the following points.

a. The day and the place when he was taken ; all the circumstances of the capture, whether it was on account of an edict or the hatred of the people.

b. What led up to the immediate capture ; was it by chance ?

c. Whether, besides the profession of the Christian faith, there was any other accusation ?

d. Of the disposition of the martyr when he was taken ; his words and deeds in minute detail, so that what was in his mind may be fully brought out.

e. The length of his captivity, the places to which he was taken, the prisons in which he was confined, his dispositions while in durance, his manner of life therein, and his daily exercises.

f. The examinations he sustained and the tribunals before which he was brought ; whether one or many ; where, when, and before what magistrates.

g. About each of the questions asked and his exact replies.

h. Whether he was tortured and with what fortitude did he bear it. Whether he revealed anything to the detriment of the Church or the faithful. What did he say when under question.

i. Was he ever given the choice between death and apostasy, and how was it proposed ; did he despise it, and with what words or deeds.

k. Was the sentence against him published, or written, or spoken, and what was the cause of death laid down, and what kind of death.

l. All the circumstances of the death ; the journey, the place, the time ; also the words, looks, gestures of the martyr in the least particulars, so that it may be clear that he persevered in confessing the faith to the end.

m. All particulars concerning the burial and place of burial ; the opinion of the faithful as to the martyrdom ; the veneration shown to the relics, &c.

n. Whether there were any heavenly signs appearing about the remains or grave or during the martyrdom, *e.g.* shinings, visions, darkness, or apparitions of the martyr to the faithful.



o. Any favours or wonders obtained by his invocation, or by prayers, or by touch of his picture or relics.

p. Concerning the translation of the body, where, when, how ; also concerning the inscription on his tomb.

q. Whether the memory of the martyr is held in veneration ; whether it has increased or decreased ; whether it exists to-day among the people or only *apud honestiores ordines* ; and also among the clergy.

r. Whether concerning the tomb, pictures or relics of the martyr, or whether in books or churches, anything has been done as regards a public ecclesiastical cult and against the decree of Urban VIII.

(7) The above particulars, and all matters illustrating them, should be got as far as possible *ex testium depositionibus ipsis*, each testifying to his own knowledge, so that the real cause of martyrdom may be established by the testimony of several or at least of two witnesses.

(8) Each witness is to be examined separately, and with closed doors. Before the examination they must swear on the Gospels, if they be Christians, or touching their breasts if they be bishops, or if heathens *per suum honorem*. The oath of telling the truth and of observing secrecy is as follows, and is inserted by the notary *per extensum* in the *rogitus* or notarial document :

*'Ego N. N. tactis hisce sacrosanctis Dei Evangeliiis coram me positis, iuro et promitto dicere veritatem super iis omnibus de quibus examinabor in causa Beatificationis et Canonizationis Servi Dei N. . . . necnon iuro et promitto religiose servare secretum nec alicui penitus revelare tam contentas in iisdem interrogatoriis quam responsiones et depositiones a me faciendas super iisdem et super articulis nec de iis loqui cum aliqua persona, exceptis Dominis Iudicibus et Notario Apostolico ad causam deputato, sub poena periurii et excommunicationis latae sententiae a qua nonnisi a Summo Pontifice (excluso etiam Maiori Poenitentiario) praeterquam in mortis articulo absolvi possim. Ita promitto et iuro, sic me Deus adiuvet et haec sancta eius Evangelia.'*

(9) This oath the witness must sign as follows : *N. N. testis iuravi ut supra*, or place the sign of the cross. The notary has to attest the signature.

(10) As it sometimes happens that the deposition of a witness cannot be finished in one session, at the end of each session his deposition is to be read over so that any mistake may be corrected. Then the witness, the notary and the judge subscribe the testimony and the *Liber Actorum* is closed and sealed. At the beginning

of the next session the witness briefly repeats the oath. At the end of the deposition, after it has been re-read and corrected, all three sign again; and the *rogitus*, or notarial document, should contain evidence thereof.

(11) When, either during or after examination of the witnesses, a written document is laid before the court—such as accounts, public or private, of the life or martyrdom of the servant of God, his letters, the edicts of the persecutors, public papers, the sentences of the judges, &c.—these the judge will carefully examine, and see whether they be originals. If they are copies, they must be collated with the originals and note taken in the *rogitus* of the sentence of the judge concerning the authenticity and integrity of the documents which will then be inserted in the *rogitus*.

(12) All the witnesses having been heard, and all documents which in the smallest way concern the cause being inserted in the process by the notary or by some one else duly elected and sworn, the *exemplatio* of the process is demanded and one or more special sessions are held for this purpose before the judge and the two notaries, who all sign the document collated; and at the end the judge gives his sentence *de concordantia*, which the notary inserts at length in the *rogitus*, which is duly signed by all.

(13) At the completion of the business a *Portitor* or bearer is selected. He, a prudent and faithful man, either ecclesiastic or layman, is sworn faithfully to carry the process to the Sacred Congregation of Rites at Rome. The fact of his election, together with his oath, must be noted in the *rogitus*, which is then signed by the judge and the notary.

(14) The process is then closed, sealed and addressed to the Sacred Congregation of Rites and given to the *Portitor*, together with a letter from the judge giving a summary of what has been done by him, and especially concerning the reliability of the witnesses.

(15) These precautions and formalities when duly carried out are substantial for constituting the validity of the ordinary's process and will be of good augury for the introduction of the cause before the Holy See.

## BENEDICTION

### 1. The First Council of Westminster decrees :

'Benediction of the Most Holy Sacrament cannot be given without leave of the bishop. Much less processions, those excepted which are prescribed by the rubrics. Nor can solemn exposition

Dec.  
xviii. 4.

of the Most Holy Sacrament be allowed without permission from the bishop. In exposition and benediction the rite should be followed which has been already prescribed with the approbation of the bishop ; since this is conformable to the Roman rite and has been prescribed for Ireland by the Synod of Thurles, which has been approved by the Holy See.'

Benedict XIV.  
27 July,  
1755.

2. But the simple benediction given with the Pyx does not require the leave of the bishop.

### BENEFICE

1. A benefice is a perpetual right, established by the authority of the Church, of receiving, on account of some spiritual office, an income which comes from ecclesiastical property.

2. In a benefice there must be : (1) perpetuity ; (2) ecclesiastical institution ; (3) a spiritual office ; (4) an income derived from Church property.

3. A benefice has perpetuity in two ways : (1) as regards itself ; (2) as regards its holder. In the first way a benefice is perpetual in so far as that, if the right to hold it be taken away from one person, it has to be given to another. A benefice cannot remain indefinitely vacant. In the second way a benefice is perpetual in so far as that the possessor enjoys a perpetual right of receiving the income until the benefice be voided by death, resignation, translation or deprivation.

4. A benefice requires canonical erection. Only to the bishop or to the Pope does it pertain to institute perpetual spiritual offices and to assign to them an income out of the property of the Church. The erection of a benefice is a distinct act of jurisdiction. The Church desires to encourage the faithful to provide for the support of religion by founding benefices which, under the protection of her laws, must be preserved carefully and scrupulously used for the purposes intended by the benefactors, and accepted, under that condition, by the Church. Once a benefice is canonically erected the capital cannot be alienated without just cause and the leave of the Holy See ; otherwise the alienation is *ipso iure* null and void. Moreover, the founder of the benefice himself cannot, even with the consent of the bishop, change the laws and conditions laid down by him in the act of foundation which has been accepted by the ordinary, should such changes be to the prejudice of the Church or of a third person.

5. The benefice is on account of a spiritual office which is the foundation and cause of the benefice. There is no benefice without

an office. The spiritual offices are such as : to celebrate Mass, administer the Sacraments, preach the word of God, recite the Divine Office, &c.

6. The benefice consists in the right to the income, not to the capital, which remains under the *dominium* of the Church. Hence the holder of a benefice has a direct *dominium* over the income or *fructus*, and, although he may have private means, he can use it to provide for the expenses of living in that manner which is considered honest and fitting. If anything remain over and above this, the holder is bound to devote the superfluities of his benefice to the poor or to other pious uses.

7. Benefices are of several kinds :

(1) *Secular* or *regular* : secular benefices are those which can only be conferred upon seculars ; and *regular* benefices are those which can be held only by regulars. N.B.—In doubtful cases the presumption at law is in favour of the seculars, and regulars have to prove their claim by deed of foundation, by privilege, or by prescription. And for this last, prescription in favour of either seculars or regulars requires a term of forty years, together with institution, *bona fides* and title.

(2) Benefices are *simple* or *double*. A simple benefice is one which has not annexed cure of souls, or jurisdiction, or pre-eminence, or dignity, or administration. A double benefice is one which has attached the cure of souls, or jurisdiction *in foro externo*, or pre-eminence or ecclesiastical administration.

(3) Benefices are also *manual* or *non-manual*. A manual benefice is one which can be taken away at the will of the collator ; hence, as lacking in fixity of tenure, these are not, strictly speaking, benefices. A non-manual benefice is one which can be only voided in a regular manner.

(4) Benefices are *collative*, or *patronal*, or *elective*. A collative benefice is one that is conferred at the absolute and free will of the prelate. A patronal benefice is one that is conferred by the prelate on the presentation of the patron. An elective benefice is one requiring free election, on the part of those who possess the right to elect, and also confirmation on the part of the prelate.

(5) Benefices are *titular* or *in commendam*. Titular benefices are for life and are conferred with the fulness of rights annexed. Benefices *in commendam* (now practically obsolete) only gave the custody and administration of the benefice ; and if the benefice were held *in commendam* for life it hardly differed *in re* from a titular benefice.

(6) Benefices are *incompatible* or *compatible*. A benefice is said to be incompatible with another when both are charged with the cure of souls or require personal residence : *e.g.* two bishoprics, two parishes, two dignities or two canonries. Compatible benefices are those which do not both require personal residence or different duties to be performed at the same time.

8. In the United Kingdom there are at present but few canonical benefices. It is well to note that the erection of a benefice is, as has been said above, an act of episcopal jurisdiction, and therefore depends upon the bishop, who has to take into consideration all the circumstances of each case.

9. We must now consider how benefices are acquired and collated. The first rule in the *Sixtina* is : ' No ecclesiastical benefice can be lawfully obtained without canonical institution.' It must be noted that the word ' lawfully ' implies here also validity.

10. There are various ways by which a benefice may be acquired :

- (1) By free collation (*q.v.*).
- (2) By presentation (*q.v.*) and consequent institution (*q.v.*).
- (3) By election and consequent confirmation (*q.v.*).
- (4) By election only (*q.v.*).
- (5) By a resignation (*q.v.*) made in one's favour.
- (6) By an approved exchange.

11. The Pope, *de iure communi*, has the fulness of power to collate any and every benefice throughout the Church ; for he is the supreme administrator of the goods offered to God, and all laws regulating benefices, even those recognising the rights and privileges of benefactors, receive their force from him and are to be understood as being liable to suspension should he consider that the common good of the Church so demands. But the Roman Pontiffs are otherwise not wont to use the *summum ius*, except in cases where it may be necessary to preserve or to enforce a right inherent, *de iure communi*, in the Primacy ; for they are not unmindful that the exercise of the *summum ius* is often *summa iniuria*.

12. The bishop, elected and confirmed, even if not yet consecrated, can, *de iure communi* and *regulariter*, collate the benefices of his diocese. Exceptions to this rule have to be proved. Thus there are certain benefices reserved to the Pope, others which are elective, others which, by special right, privilege, custom, or prescription, belong to others.

13. *Sede vacante* the chapter or the vicar capitular can collate such benefices as belong simultaneously to the bishop and to

the chapter. The chapter or the vicar capitular can also give institution to those who are properly presented by the patron. But they cannot collate benefices which belong solely to the bishop; hence they cannot fill vacant parishes of free collation, but can only appoint temporary vicars.

14. If a prelate be negligent in the matter of benefices, his immediate superior can act; and also the chapter can act as far as concerns benefices which ought to be conferred by the bishop. Hence if a bishop, through negligence, refuse to fill up a vacant benefice an appeal lies to the metropolitan, who can either act himself or by censures compel the bishop to remedy the grievance.

15. The Church requires certain things as regards holders of benefices.

(1) Legitimate birth; for illegitimacy brings irregularity.

(2) The tonsure; for a laic is incapable of exercising the spiritual office which is attached to the benefice.

(3) The order that is required by law or custom for a particular benefice; but custom allows the order to be received within a year of obtaining the benefice. Trent,  
Sess. 22,  
c. 4

(4) A fixed age, which varies according to the benefice: *e.g.* 30 years (completed) for the episcopate, 25 years (begun) for an abbacy, dignity or parish, 22 for a dignity without cure of souls, 14 (begun) for a simple benefice.

(5) Immunity from censures and occult irregularities.

(6) The knowledge necessary for the office.

(7) Probity of morals.

(8) The observances of approved local custom which sometimes demand other requirements.

16. If any of these *requirenda* are wanting the collation is thereby invalidated. Moreover, if a benefice be conferred upon an excommunicated person, or upon one suspended or irregular, not only is such collation null and void but also any election, presentation, or resignation made in favour of such a one. But if collation be made to one unworthy, unless his crime have attached a censure or irregularity, it is not *ipso iure* null and void, but it has so to be declared *in foro externo*.

17. Benefices must be collated:

(1) *Gratis*, otherwise simoniacal collation is null, being real simony (*q.v.*).

(2) Freely and spontaneously.

(3) Without obreption or subreption (*q.v.*).

(4) Absolutely, for election and collation are among those lawful acts which do not allow of extraneous conditions.

(5) Determinedly to some other person ; hence no one can collate a benefice on himself.

(6) Perpetually, for stability is one of the characteristics of a benefice.

(7) Wholly : that is, without lessening the income or reserving part of the income or imposing a pension without the authority of the Pope ; for he who fulfils the office has the right to the whole income thereunto attached.

18. Benefices can be voided by death, by resignation, by translation or by deprivation.

19. Although perpetuity is one of the characteristics of a benefice, it sometimes happens that it may be necessary to unite several benefices into one or to divide one into several. It may also happen that, in the flux and changes of human things, actual loss or other unforeseen need require a benefice to be dismembered or even suppressed altogether.

20. Union of benefices can take place in three ways :

(1) Two benefices may be so joined that there is formed a new one which enjoys the privileges of the former two.

(2) Two churches may be united under one rector though each church remains independent of the other and retains its nature, privileges, property, income and title ; this union may, moreover, be temporary or perpetual.

(3) Two churches may, on the other hand, be united so that one is made subject to the other : as a parish church united to the cathedral.

21. The Pope has the fullest power of uniting benefices, but he is not accustomed to do so without the consent of the bishop.

22. The bishop *regulariter* can unite those benefices which are under his jurisdiction. But it is necessary for the validity of the union that there be a just cause and also the consent of those who are interested in the union.

23. The bishop, even with the consent of his chapter, cannot unite any church to his own *mensa* nor to that of the chapter. The Clementine declares such union to be *inane, irritum*, notwithstanding any contrary custom. The practice of making mensal parishes is against the sacred canons, and unless the Holy See consents the union is unlawful ; but the Holy See has in certain special cases consented to the practice, as in England and Ireland.

2. De  
rebus  
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24. The division of benefices requires a few remarks. For a just cause the bishop can divide a benefice: *e.g.* if the obligations thereof cannot be fulfilled without the division. If the parish priest or the parishioners object to the division, the bishop is bound to hear and to examine their objections. Should he decide against them he can decree the division; then there is place for an appeal if the objectors consider themselves hardly dealt with. But this appeal has only a devolutive not a suspensive effect.

25. A benefice is dismembered when a part of the income is given to another benefice or to a needy church. A bishop can, for a just cause, dismember a benefice; but the consent of the beneficiary is required, and those interested in the matter have to be heard.

26. In the case of dividing, uniting, dismembering Apostolic Vicariates, the consent of the Apostolic Vicar is not required, as his vicariate is not of the nature of a benefice.

27. It sometimes happens that from one cause or another the capital which affords the income is lost; therefore, lest an obligation *ex iustitia* should be thought to remain, a benefice, once canonically erected, can be wholly suppressed by decree which by papal authority alienates the capital from the property of the Church.

28. A beneficed clerk has certain obligations.

(1) He is bound *ex iustitia* to recite the Divine Office.

(2) If, without lawful impediment, he have not said the Office, he is bound to make restitution to the fabric of his benefice or to the poor; and the obligation binds in conscience before any sentence is pronounced.

(3) If the benefice have cure of souls attached, he is bound within two months to make the profession of faith before his bishop or the vicar general.

(4) A canon has, within the aforesaid time, to make the profession also before the chapter.

(5) If the clerk be without the necessary order he is obliged to receive it within a year, otherwise he loses his voice in chapter and half of the income, and he is liable to lose the whole benefice.

(6) He is bound *de iure communi* to personal residence, *i.e.* in the place of his benefice.

(7) He is bound to exercise due hospitality.

(8) He is bound to have in writing and in duplicate all documents concerning his benefice, one copy to be kept in the diocesan archives and the other in his possession.



(9) He is bound to observe modesty in his furniture and frugality in his table.

(10) He has to take oath before the bishop that there has been no simony in procuring the benefice and that he has received it without any gift, pact or promise to the patron.

(11) He is bound to contribute his *quota* to the procuration (*q.v.*) at the time of the bishop's visitation.

(12) He is bound to attend the public processions.

(13) He is bound under mortal sin to pay any pensions lawfully imposed upon his benefice.

(14) He is bound to spend upon pious works the superfluities of his benefice, after his honest sustenance is provided.

(15) He is bound from the same superfluities, but not from the necessaries, to restore his church or chapel, house and other possessions of his benefice.

29. (1) A beneficed clerk can live on the fruit of his benefice, although he may have private means. With these latter the Church has nothing to do in the matter of benefice.

(2) He can lawfully distribute the superfluities of his benefice among those who, although they have the necessaries of life, have not sufficient for the decent support fitting for their state, condition, or person.

(3) From the proceeds of his benefice he can bring up children not only legitimate but spurious, for those in need are fitting objects of piety.

(4) He can support his relations and can pay for their promotion or professional requirements if they be indigent.

(5) He can help his relations not only in their present necessities but also with what is necessary to secure a modest future. But here Christian prudence and moderation have to be taken into account before the affections of flesh and blood.

(6) He can set aside from his superfluities a moderate portion for future contingencies.

(7) He can remunerate others for their services.

(8) He can practise honest hospitality not only to the poor and to pilgrims but also that kindly and urbane hospitality which is due to his position and surroundings.

(9) He can also provide for the honest and moderate recreation of himself and friends.

30. On the other hand, there are certain things the clerk cannot do as regards his benefice.

(1) He cannot leave his benefice to anyone.

(2) He cannot bequeath to profane use ecclesiastical goods in any notable quantity.

(3) He cannot give ecclesiastical goods to relatives beyond what is needed by their condition or for their decent support.

(4) He cannot spend his superfluities in excessive and unseemly banquets, in play, theatres, or in sumptuous houses, &c.

(5) He cannot alienate any of the property of his benefice.

### BENEFICIATI

1. *Beneficati* are all those who hold canonical benefices (q.v.).

2. In a special sense the term refers to those beneficed clerics in a cathedral who are not canons, and yet are, in a sense, members of the capitular body though taking no part in the capitular meetings.

3. *Beneficati* are bound *ex iustitia* to comply with the conditions of their benefices under penalty of restitution or, in event of contumacy, privation.

### BIGAMY

1. Bigamy is a successive reiteration of consummated marriage. Hence it differs from polygamy, which is not successive but simultaneous.

2. In canon law there are three kinds distinguished, viz.:

(1) True; (2) Interpretative; (3) and Similar (*similitudinaria*).

3. True bigamy is found when a person, even before baptism, successively contracts and consummates matrimony with two women.

4. Interpretative bigamy is found when a man is considered, by a fiction of law, to have two wives, although, as a matter of fact, he has only one. For instance:

(1) He is an interpretative bigamist if he marry a widow or a woman who has been known unlawfully by another. This induces irregularity.

(2) If he have carnal knowledge of his wife after she has been guilty of adultery; and this even if the husband be ignorant of the fact of adultery or if she have fallen a victim to force.

(3) If he *de facto* enters upon and consummates two invalid marriages, or even if only one of the two marriages be invalid.

5. Similar bigamy is found when a man in sacred orders, or solemnly professed, attempts to contract and consummate marriage.

6. Bigamy, which by its name concerns only the man, is not incurred by fornication or concubinage before, during, or after marriage.

7. In olden times only two kinds of bigamy were recognised at law, viz. : True and Interpretative. Similar bigamy is a later addition to the law. As bigamy induces irregularity (*q.v.*), it may be as well to note that the ground for the irregularity differs in the Eastern and in the Western Churches. In the East true bigamy induces irregularity because it affords grounds for a suspicion of incontinency : 'Let a bishop be . . . the husband of one wife.' In the West the irregularity is held to arise *ex defectu Sacramenti* : that is, a second marriage does not show forth the great mystery, the union of Christ with His Church. Both views have their difficulties.

8. The penalties of bigamy are three in number, viz. :

(1) Irregularity.

(2) Loss of all clerical privileges.

(3) Deprivation of the right to wear the tonsure and clerical dress.

9. The Pope can dispense from the irregularity incurred by all forms of bigamy, as far as they impede the reception of orders and the acquisition of dignities. For it must be remembered that the irregularity induced by bigamy is not of natural or of divine law ; it is a purely human and positive law of ecclesiastical origin. This fact seems to give the true ground for the irregularity.

10. A bishop cannot dispense, even for the tonsure or minor orders, in cases of true bigamy or in one that is notoriously interpretative. This is the common opinion. But he can dispense in occult interpretative bigamy and in the irregularity thereunto accruing when it comes *ex delicto*. Similar bigamy, purely such, the bishop can dispense with as far as the reception and exercise of orders received is concerned, provided that the delinquent has done penance and shows signs of an amended life.

N.B.—A necessary distinction has in practice to be drawn between irregularity which comes *ex delicto* and that which arises

1 Tim.  
iii. 27

Cf. Van  
Esen, II.  
tit. 10,  
cap. 2,  
n. 31

Trent,  
Sess. 24,  
cap. 6

*ex defectu sacramenti*. In the former the bishop can dispense ; in the latter only the Pope.

## BISHOPS

### *Summary*

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 ARTICLE VIII. Episcopal Jurisdiction *in foro interno*.  
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 ARTICLE X. Bishops and Regulars.  
 ARTICLE XI. The Burden of the Episcopate.  
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## ARTICLE I

### *The Nature of the Episcopal Office*

1. A bishop is one who has received the fulness of the priesthood as instituted by Christ for the ruling of His Church.

2. Leo XIII. says : 'As the Roman Pontiff is the *magister* and the *princeps* of the whole Church, so bishops are the *rectores* and *capita* of the churches which each one rightfully has accepted to rule. Each has the right in his place of jurisdiction to preside, to command, to correct, and, in general, to decide about those matters which concern the Christian commonweal. For they are sharers of the sacred power which Christ the Lord received of the Father and left to His Church.'

Encyclical  
Letter of  
8 Dec.  
1882

3. Two things have to be distinguished in the episcopal office :

- (1) The fulness of the priesthood, *i.e.* the power of order.
- (2) The ruling of the Church, *i.e.* the power of jurisdiction.

4. The completeness and universality of the episcopal office is found in the Roman Pontiff, the Bishop of the Church Catholic.

(1) In those called to share his solicitude over all the churches, it is found completely and universally as far as the power of order

is concerned, and partially as to the actual power of jurisdiction ; for while the sacrament of Order is one, viz. the priestly order, the powers conferred by it are twofold : primarily, over the Real Body of Christ ; and secondarily, and consequently, over His Mystical Body, the Church.

(2) According to the will of Christ these powers of the sacrament of Order are bestowed in various measures upon different persons. Those concerning the Real Body of Christ are given essentially to every priest, and essentially and integrally to every bishop. Hence, then, a bishop is said to possess the fullness of the priesthood not only because he can offer the Sacrifice, but also because he can exercise the power of making sacrificers.

(3) As regards the power over the Mystical Body, the Church, a bishop is subject to the law and order imposed for the common good ; and this law and order have developed in the Church as a natural consequence of her life. The power of jurisdiction, then, is in the bishop in two ways : (1) radically only ; (2) in act as well. Hence, it is said that while the bishop has *in se* a capacity for an undefined jurisdiction, he is *in act* limited by the Church to a certain place and to certain persons who form the flock committed to his ordinary or to his delegated care by the Supreme Pastor, the universal ordinary of the Church.

5. A bishop, by Divine right, presides over his church with ordinary jurisdiction, and he is not *in se* a vicar of the Pope, although he depends upon him as the head of the whole body.

6. Hence we may define a bishop as : A pastor with the fullness of the priesthood, who is set over a particular portion of Christ's flock, and has the chair of his authority attached to one special church or assembly of the faithful connected with a definite district or locality. The limits of his jurisdiction, whether concerning places or persons, are subject to the will of the Supreme Pontiff.

7. As bishops possess the fullness of the priesthood, they are above those who have only the essential part of the sacrament of Order. The Council of Trent decrees :

Sess. xxiii.  
can. 7

‘ If anyone says that bishops are not superior to priests, let him be anathema.’

8. Bishops are said to be successors of the Apostles in this sense, viz. that the body of bishops succeeds to the body of the Apostles : that is, they are collectively, not individually, the successors of the Apostles. For in the Twelve we may distinguish three powers :

- (1) The essential power of sacrificing and of absolution.
- (2) The integral power of ordaining.

(3) A universal power of ruling over persons, places, and things, subject to the Petrine supremacy.

Now, bishops *individually* succeed to the Apostles as regards the essential and integral powers, but only partially as concerns the power of ruling; but *collectively* they are the real successors, for in their body is found the universal jurisdiction. It exists *distributively* among all the bishops; and wholly and *in solidum* in their head, the Pope, who alone of all bishops actually sits in an Apostolic chair held by an unbroken succession of pontiffs.

9. The episcopal power of order comes by the gift of consecration, which confers an indelible character. Hence it can be exercised *validly* at all times.

10. Concerning the episcopal power of jurisdiction, there are two opinions as to its origin, and hence as to its use:

(1) The entire episcopal jurisdiction comes to the individual bishop immediately from God in his consecration; but the actual assigning of subjects and diocese comes from the Pope.

(2) It comes to the individual bishop, both *in potentia* and *in actu*, from the Pope.

The practical difference between the two opinions is, that according to the first theory the Pope could not validly, or lawfully, withdraw the jurisdiction of a bishop without a just cause; in the second he could do so validly but not lawfully. From neither opinion does it follow that bishops, as a body, are only papal vicars. If, according to the will of Christ, they hold jurisdiction directly of the Pope, it is also His will that, as a rule, they should govern their flocks as true and ordinary pastors: that is, in their own names and with a power inherent in their own persons. It would be against the constitution of the Church for a Pope to depose all bishops and to rule the world by his vicars.

11. By the power of order bishops judge, interpret, consecrate, ordain, offer, baptise, and confirm.

12. By the power of jurisdiction they rule the flock committed to their charge by governing, according to the law of the Church, both clergy and laity, and by administering, according to the same law, the property of the Church.

## ARTICLE II

### *What is required in Candidates for the Episcopate*

13. The qualities to be sought for in candidates for the ecclesiastical ministry are laid down by the Third Council of the Lateran

(1179) under the heads of age, morals, and knowledge. As regards the episcopate, specifically, the laws are :

Sixt. 1. 1,  
c. 7, tit.  
*De Electione*

- (1) *Age*.—*a.* Thirty years completed.  
*b.* Six months, at least, in sacred orders.  
*c.* Freedom from any defect in mind or body which would induce irregularity.
- (2) *Morals*.—*a.* Purity of personal morals.  
*b.* Freedom from all irregularity arising from personal conduct.  
*c.* Freedom from censure.  
*d.* Birth in lawful wedlock.  
*e.* Catholic parentage ; for heresy induces incapacity in the male line to the second, and in the female to the first, generation.  
*f.* Good fame (*q.v.*).

Sess. xxii.  
cap. 2, *d.r.*

(3) *Knowledge*.—The Council of Trent says that the knowledge of a candidate should be such that he can satisfactorily fulfil the duties of his office ; therefore he should be a doctor, or at least a licentiate in theology or in canon law, or have the testimony of some public academy that he is fit to teach others. In other words, there must be some proof of his knowledge.

14. The knowledge required in a candidate for the episcopate is classed under three heads, viz. Eminent, Mediocre, Sufficient.

(1) *Eminent* knowledge is found when the person is so skilled either in theology or in canon law that he can, readily and without the aid of books, explain even difficult questions.

(2) *Mediocre* knowledge is found when the person, with the aid of books and after deliberation, is able to clear up difficult points of law or theology.

(3) *Sufficient* knowledge is found when the person is able to discharge the duties of his office.

15. Now, while *eminent* knowledge is desirable, *mediocre* knowledge may be accepted, for this implies a knowledge of books and a mind alive to the necessity of deliberation. *Sufficient* knowledge is tolerated if it can be supported by duly qualified assistants whose counsel may obviate the many dangers so limited a knowledge may cause.

16. Which is the more necessary in a candidate for the episcopate, a knowledge of theology or a knowledge of canon law ? The

question is one disputed in the schools, but the common opinion is that in normal cases—that is, where the bishop is not brought face to face with theological difficulties—a practical knowledge of the law is the more necessary for a ruler and administrator of the law. If he have not this practical knowledge of the canon law but be only a theologian, all agree that such a bishop is bound to have for his vicar general one who can supply his want as a canonist. It would hence seem that, in countries where the Church has to be built up, it is of vital importance that a bishop should rather know the canon law than be a theologian, for the foundations must be laid in a lasting manner.

17. Candidates are divided into three classes: the unworthy, the worthy, and the most worthy.

(1) The *unworthy* is one who is wanting in at least one of the necessary qualifications.

(2) The *worthy* is one who has them all in a *sufficient* degree.

(3) The *most worthy* is the one who has them all in a more perfect way than the others.

18. For the episcopate it is necessary to select the more worthy person in preference to the worthy candidate, and those who promote a person who is worthy indeed yet less worthy than another are guilty of mortal sin. The Council of Trent says:

‘And as regards all and each of those who have in any way any right from the Apostolic See or who otherwise have a part in the promotion of those to be set over the churches, they sin mortally unless they carefully endeavour that those be promoted whom they themselves judge the most worthy.’

Sess. xxiv.  
cap. i. d. r.

19. The S.C.P.F. has issued a list of points to be considered in candidates recommended for the episcopate in countries subject to its jurisdiction. The Fourth Council of Westminster gives them as follows:

(1) Name, surname, age and country of the candidate.

(2) His ecclesiastical diocese and province.

(3) Place where he made his theological course, and his proficiency therein.

(4) His degrees, if he have taken any.

(5) Has he acted as professor, and in what subjects?

(6) Has he had any sacred business to transact, and what kind of experience has he gained therein?

(7) In how many and what languages is he skilled?



(8) What offices has he held and how has he succeeded in them ?

(9) Has he shown prudence in discussion and in action ?

(10) Is he in good health ? Thrifty ? Not hasty ? Accustomed to the management of temporalities ?

(11) Is he determined or changeable ?

(12) Is he of good fame (*q.v.*) ? Or has there ever been anything immoral about him ?

(13) Is he devoted to the discharge of his priestly duties ? Of an edifying deportment ? And a careful observer of the rubrics ?

(14) Does he show signs of seriousness and religion in his dress, his behaviour, his appearance, speech and every other way ?<sup>1</sup>

### ARTICLE III

#### *The Election of Bishops*

20. According to canon law bishops can be appointed in several ways, viz. by election (*q.v.*), by postulation (*q.v.*) or by nomination (*q.v.*).

21. The general way is by election ; but the method by which the election is made has now been generally altered. Formerly the cathedral chapter had the right of election and the confirmation was left to the higher authority ; but now, with the exception of some German-speaking dioceses where the right is preserved by Concordat (*q.v.*), cathedral chapters have lost it. The Pope is, now, in most cases, the sole elector of bishops.

<sup>1</sup> On these questions, which all who have to take part in recommending persons for the episcopate are bound, in conscience, to take into consideration, there is room for a few remarks. (1) A real knowledge of Latin or Italian is required for the purpose of corresponding with the Holy See. In a letter sent from S.C.P.F., 29 September, 1868, the Cardinal Prefect begs the bishops ' to be sure to insist with even the laity, and particularly with your own clergy, that whenever they send any petition or any deeds having reference to ecclesiastical business to this Sacred Council, they shall be careful to make use as far as possible of the Latin or Italian language.' Hence the slight acquaintance with Latin which is necessary for saying Mass or Office is not sufficient. (2) Actual success in any office is not so necessary as prudence coming from the capacity of learning by experience. (3) The administration of temporalities requires a knowledge of both canon and civil law ; and if eminent knowledge be not forthcoming, all the more necessary is it that the candidate should possess the faculty of knowing how to use capable advisers. (4) The good fame (*q.v.*) required is the technical good fame which is the opposite of the bad fame which induces irregularity. A distinction also must be made between *infamia iuris* and *infamia facti*. The latter ceases upon proof of repentance. (*Cf. Santi, Praelectiones Iuris Canonici*, lib. i. p. 60, ed. 1904.)

22. To assist the Supreme Pontiff in electing worthy bishops a previous investigation is needed. This is known as the *processus informationis* or *inquisitio*, and it is of two kinds.

11. Rule of the Chancery (q.v.)

(1) An inquiry made upon the spot where the person lives.

(2) An inquiry made at Rome by a committee of cardinals who examine the local report and decide upon the candidate whom the Pope is to be recommended to elect. If the Pope accept the recommendation (he is absolutely free to accept or to reject any proposed candidate) he announces his election in Consistory and publicly confirms it in these words :

*‘Auctoritate Dei omnipotentis, Patris et Filii et Spiritus Sancti, et Beatissimorum Apostolorum Petri et Pauli, ac nostra, Ecclesiam N . . . de persona N . . . providemus ipsumque illi in episcopum praeficiemus et pastorem ; curam et administrationem ipsius eidem in spiritualibus et temporalibus plenarie committendo.’*

23. In the process followed now in most countries the act of election and confirmation is found in the Pontiff's acceptance of the name proposed by the S.C.P.F. or other Congregation or in his choice of another person for the vacant see.

24. As postulation only has place where there are canonical rights of election, it need not detain us now.

25. Nomination, too, does not practically concern us, as it is a right akin to election, and is generally to be found as the result of a Concordat.

26. Once the Pope has signified his election, the person so elected has, if a secular, to give his consent within three months dating from the time when he has had cognisance of the pontifical act ; if a regular, he must first obtain permission of his religious superior, and then, within one month of this, signify his consent.

27. But it may so happen that the Holy See has been misled. If so, there is room for an appeal against an election of a person considered to be unworthy. But the appellant must be mindful of his condition. If he lose his case and cannot prove, by most clear evidence, that he was not moved by the spirit of calumny, he is *ipso facto* suspended for three years from his benefice and is liable to other penalties.

28. After confirmation the elect, once he accepts the charge, acquires *in potentia*, full jurisdiction over his new diocese. But before he can exercise it he is bound to take possession of his see in the legal manner : that is, by showing to the chapter the Apostolical letters concerning his promotion. Should he fail to do so, he and all concerned incur suspension (q.v.) *latae sententiae* from

Pius IX.  
Constit.  
*Apostolice Sedis*  
12 Oct.  
1869

their benefices, and absolution thereof is reserved to the Roman Pontiff.

#### ARTICLE IV

##### *The Recommendation*

29. In countries under the jurisdiction of S.C.P.F. there are various ways in which recommendations to the episcopate are made. In some, where the episcopal hierarchy is established, the clergy, the chapter and the provincial bishops take part ; in others, only the chapter or body of diocesan consultors and the bishops have rights ; while, elsewhere, only the bishops draw up the list of those to be recommended. Hence it will be necessary to note in different sections the various methods which obtain in conducting this weighty and important business.

30. But before treating of these it may be as well to mention some general principles which underlie all the different manners of procedure :

(1) There is no election (*q.v.*). Hence the clergy and the bishops have no rights of election and cannot claim any such rights. They also have no rights of nomination (*q.v.*) or of postulation (*q.v.*). The sole right which they enjoy is that of recommendation (*q.v.*).

*Cf. Instruction of S.C.P.F. 20 April, 1852.*

(2) Hence the Apostolic See may exercise its right of choosing others than those commended so often as it may seem necessary or opportune so to do.

(3) But, in order that the Holy See may arrive at a wise and proper judgment as to the qualifications of the various candidates, the Sacred Congregation desires to have full and accurate information. So, besides a scrupulous observance of the rules of procedure, it is open to everyone, nay, it is the bounden duty of all, to give this information to the Prefect of the S.C.P.F. The one point necessary is, not to mislead the Holy See ; hence the information given must be accurate and be so presented that it can be tested.

(4) Although there be no canonical election, yet the procedure of recommendation follows the rules which govern election (*q.v.*).

#### § 1. *England*

31. In England the procedure is laid down in an Instruction of S.C.P.F. dated 21 April, 1852. It runs as follows :

‘ When a bishop has to be appointed, the provost and canons of the church in question shall meet *capitulariter*, and after the

customary prayers and the oath of secrecy, votes shall be given three times for persons to be recommended to the Holy See as worthy of the office. If, at any of these three times, there be not a clear majority in favour of some one, the voting shall not count but must be taken again. The act of the chapter, duly recorded and signed, must be handed to the archbishop or to the suffragan senior bishop, should the archiepiscopal see be vacant, or in case it is for the appointment to the archiepiscopal see itself; in order that the bishops at their meeting may confer together and refer, to the Sacred Congregation, the three names, written in alphabetical order, which have obtained at each voting a majority, giving their own opinion; they also must send the authentic deed of the capitular resolution. Finally, seeing that it may happen sometimes that canons may be lawfully hindered from being present at the chapter at which this recommendation is to be made, the Sacred Congregation has thought fit that their proxies should be admitted, but only empowered to hand in a paper with the name and surname of the person to be elected.'

N.B.—The S.C.P.F. subsequently explained this last clause as meaning three papers with the names of those to be proposed.

**32.** The Westminster Councils have incorporated the above Instruction and amplified it in the following decrees:

(1) 'On the death, therefore, of a bishop, the canons shall meet together after the funeral ceremony has been duly performed; and under the presidency of the Provost they shall go through everything prescribed by law for the election of a Vicar Capitular [*q.v.*]. And this should be done within eight days.'

(2) 'Within a month (or when they are summoned, in case it is for the election of a bishop to succeed another who is not dead) the Provost and canons of the church in question must assemble as for chapter under the presidency of the archbishop, or, if he cannot be present, or if it be a case of the vacancy of the archbishopric, under that of the senior bishop. He is, however, to take no part in the business. But they, then and there, are to proceed to the recommendation, in the way set down in the late Instruction upon this matter by the S.C.P.F., April 21st of the present year (1852), to be added to the acts of this synod. After that, as is therein to be found, the act of the chapter must be handed over to the archbishop or to the senior suffragan that the bishops at their meeting may confer together as to the three names sent in in alphabetical order, and forward them to the S. Cong. giving their opinion as to each of those thus recommended. If any canon be lawfully

I. West-  
minster,  
D. xii.

hindered from being present at the chapter at which this recommendation has to be made, he shall be allowed to hand in, through a proxy, chosen from the chapter, three notes containing the names and surnames of those to be recommended by him.'

N.B.—But, as far back as 1874, the S.C.P.F. authorised the English bishops to add names on their own recommendation; and this was confirmed by another decree of the same Sacred Congregation passed on April 25, 1904, and sanctioned by the Pope on May 3 of the same year.

IV. West-  
minster,  
viii.

(3) 'The members of the chapter should therefore bear in mind the greatness of this privilege and its responsibility as regards the happiness and prosperity of the diocese; seeing that on their judgment and honesty depend the unity of the clergy, the good estate of the diocese, the peace of the flock. For as the bishop so is the church. Hence in selecting names, the members of the chapter should not confine themselves to the chapter or to the diocese, but take note of men especially fit, even out of the diocese, who shall not be merely endowed with the necessary gifts but eminent also for their ability in human affairs as well as divine. . . . In sending on the names of those nominated by the chapter, the canons should not neglect to send also to the metropolitan, or to the bishop who has taken his place, any facts concerning the persons recommended, so far as they can do so.'

33. The method of voting for the three names to be recommended is then laid down in the First Westminster Council.

(1) 'On the death of the bishop, all the canons shall meet together to assist with due respect at the funeral. And within eight days from the bishop's death<sup>1</sup> the chapter shall, by free election (*q.v.*), appoint its vicar with power to govern the diocese in accordance with the canon law. And he, when once appointed, cannot be set aside by the chapter or have anyone associated with him in his office.

(2) 'Then, at the place and time arranged by the archbishop, or, when he is hindered or deceased, by the senior bishop, but not more than a month from the day of the bishop's death, the chapter shall be convened; and after Mass of the Holy Ghost has been sung by the principal canon and the oath of secrecy made by all, the canons shall place in a receptacle, expressly prepared, their secret votes. At the first voting each shall give the name of the ecclesiastic whom he considers before the Lord to be the most fit to fill

<sup>1</sup> Decree XII says that the meeting is to be after the funeral.

the vacant see. These votes shall be given in writing without any previous discussion at the chapter meeting,<sup>1</sup> and shall be taken charge of by three scrutators chosen at the beginning of the meeting. And they [*the votes*] are to be so folded that only the name of the person proposed can be seen. The name of the proposer should be written inside and the voting paper well secured by some unknown seal. The writing should also be different from the usual hand of the voter. Then by adding up the votes it will be seen if anyone has a complete majority of the votes of those present and of those absent but represented by proxies; but not of those who are absent and not so represented. As soon as the names have been made known after each scrutiny the votes should be burnt.

(3) 'Absentees cannot vote by letter, but only by proxies chosen from the chapter and duly authorised. And this authorisation cannot be made without a really necessary cause for the absence fully set forth and to be submitted to the chapter. If it is a case of ill health, it should be stated that, in the opinion of at least one doctor and one canon, whose signatures must be attached to the document, the member of the chapter in question cannot be present. The proxy must only be allowed to present three papers containing the names and surnames of those voted for.

(4) 'But if on the first scrutiny no one has a majority, the votes should be taken again until some one has.

(5) 'The appointment of the second and third candidate must be managed in the same way. And a document shall be drawn up in the following terms:

"The see of N. being vacant by reason of the death or . . . of his Right Reverend Lordship N. N. the chapter has held a meeting under secrecy, on this the . . . day of . . ., in presence of his Most Reverend Lordship the Archbishop (or . . .) at which, after a Mass of the Holy Ghost had been offered, the Rev. . . ., the Rev. . . ., and the Rev. . . . were chosen scrutators.

"It appears that upon the three scrutinies, those ecclesiastics whose names are here written in alphabetical order have, by a majority of votes, to be submitted to the judgment of the Holy Father: the Rev. A. B., the Rev. C. D., the Rev. E. F. Everything was carried out in accordance with the decrees of the S.C.P.F. In testimony whereof the chapter has ordered this present document

<sup>1</sup> This meeting is solely for voting. The preliminary *tractatus*, though not ordered, does not seem to be forbidden by this decree: it is a separate meeting, and is not presided over by the archbishop.

to be issued after being duly read out in the chapter, sealed with the chapter seal and signed by the provost, the secretary and the scrutators, on the . . . day of . . . in the year . . .

<i>The Seal</i>	A. <i>Provost</i>	G	} <i>Scrutators.</i>
	B. <i>Secretary</i>	M	
		N	

(6) 'Three authentic copies should be made, one of which should be kept by the chapter, another by the archbishop, and the third sent by the archbishop to the S.C.P.F.'

34. The order of the proceedings, therefore, is :

- (1) The convention of the chapter.
- (2) The Mass of the Holy Ghost.
- (3) The oath of secrecy.
- (4) The election of three scrutators. Neither the provost nor the secretary of the chapter can be chosen, as they have to be witnesses.
- (5) Secret voting for the first name, *i.e.* 'the most fit,' until one gets an absolute majority.
- (6) Voting for the second name under like circumstances.
- (7) Voting for the third name also until an absolute majority.
- (8) After each scrutiny is completed and noted the votes are burnt.

(9) When three names have each been chosen by an absolute majority the official document is drawn up.

(10) The three names elected for recommendation are to be put in alphabetical order.

(11) The document has to be read publicly in chapter before all the voters, and then signed and sealed by five witnesses, *viz.* the provost, the secretary of the chapter and the three scrutators.

(12) Three authentic copies are made—one for the Holy See, one for the archbishop, and one for the chapter.

(13) The archbishop is charged with sending the capitular act to the Holy See.

(14) In the absence of the archbishop, his duties fall upon the senior suffragan or upon the provincial bishop next in seniority.

## § 2. *Ireland*

35. In Ireland the procedure is laid down in a decree of the S.C.P.F. dated 17 Oct. 1829.

36. It contains the following provisions.

(1) When a see falls vacant a vicar capitular (*q.v.*) is appointed according to the sacred canons.

(2) The metropolitan of the province in which the vacancy occurs, after having received information of the fact and of the election of the vicar capitular, issues to the same his letters mandatory to summon, on the twentieth day from the date of the decree, those to whom it belongs to recommend to the Supreme Pontiff three worthy ecclesiastics, one of whom may be set by him over the vacant diocese.

(3) Parish priests, free from censure and in actual and peaceful possession of their parish or united parishes are to be summoned. And where there is a chapter the canons have also to be summoned with the parish priests.

(4) The vicar capitular, after receiving the metropolitan mandate, writes within eight days to each of those who have a right to be present and orders them to attend at the place and time mentioned.

(5) The metropolitan, or one of his suffragans delegated by him, presides at the meeting.

(6) The above regulations as regards the convocation and ordering of the meeting are necessary for the validity of the proceedings.

(7) All being gathered together, after the solemn Mass of the Holy Ghost has been sung, the president takes his seat in the midst ; and after those who have no right to be present have been dismissed, the vicar capitular orders the secretary to call out the names of all who should be present. Upon each answering to his name, a seat is assigned to him. If any be absent, the president asks the vicar capitular for the cause. Provided there is no fraud, if a fourth part of the whole number of parish priests or of the canons be present, whatever is done at the meeting is to be considered as valid.

(8) Absentees can send, by any parish priest or canon of the diocese, their votes, written in their own hands and fastened in a sealed envelope, directed to the president : and this vote has the same effect as though the voter was himself present, provided that a certificate of his health signed by two medical men be sent to the president. Moreover, the absentee has to make before his parish priest or canons the same declaration which those present have to make before the president at the meeting.

(9) The meeting being thus formed, the president lays before the clergy the business that awaits them.

(10) Two scrutators are then chosen and take the oath of their office.



(11) The voting begins by each placing in the urn his vote.

(12) When all have recorded their votes, the scrutators, after counting them, tell the result to the president, who informs the meeting of the three names which have received the majority of votes.

(13) 'Then an act is drawn up in duplicate before the meeting and is signed by the president, the secretary and the scrutators. One copy is to be given to the vicar capitular, who sends it to the Holy See: the other belongs to the archbishop, who in due course submits it to his suffragans.'

(14) All the rights and duties belonging to the president are communicated to the senior suffragan *sede metropolitana vacante*.

(15) The bishops of the province, under the presidency of the archbishop or other senior, meet within ten days after and pass their judgment and opinion on the act of the diocesan meeting. The president takes note of their opinion upon the merits of the three priests who are to be recommended to the Holy See in a letter signed and sealed by each bishop, which the president sends to the Holy See.

(16) This commendation over, should the bishops judge that the three names commended are less worthy of election to the vacant see, without any more recommendation the Pope will provide according to his wisdom for the vacant church.

(17) In the case of a coadjutor bishop with the right of succession, the same manner of recommendation has to be observed as though the see itself was vacant, but the rights of president belong to the bishop to whom the coadjutor is to be given. But in the meeting of the suffragans the metropolitan rights are preserved.

(18) Those who are to be recommended must be native citizens of Ireland, faithful subjects of the King of the British Empire, and endowed with the good morals, piety, learning and other things necessary for a bishop.

(19) The act of recommendation is to be drawn up in the form of a petition in which it is made clear that there is no obligation imposed upon the Holy See of electing one of those recommended.

(20) The S.C.P.F. finally declares that the commendation is for giving light and knowledge to the Holy See, but not for imposing any obligation; and on April 25, 1835, in reply to a doubt, the Sacred Congregation once more reiterated the order that there should be only one voting for the three names.

37. On comparing the method pursued in Ireland with the later form introduced in England we note :

- (1) That the parochial clergy have votes as well as canons.
- (2) That the meeting is not formally constituted until the roll-call has been made and a seat assigned to each person.
- (3) That only two scrutators are nominated.
- (4) That only one voting takes place, so that the three names have to be written in due order upon one voting paper.
- (5) That only two copies of the act are drawn up.
- (6) That it is the vicar capitular who sends the document to the Holy See.

### § 3. *In America*

38. According to the Third Plenary Council of Baltimore the method now pursued in the Church of the United States of North America is as follows :

(1) The metropolitan, or the senior suffragan by delegation or by right, if the vacancy concerns the metropolitan see and he does not delegate another, calls, within thirty days of the vacancy, a meeting of the consultors and the irremovable rectors of the diocese.

(2) They, after taking the oath, vote by secret ballot, for three persons to be recommended to the Holy See. Their vote is merely consultive.

(3) The president of the meeting causes the acts to be drawn up in duplicate and signed by the secretary. The president sends one to S.C.P.F. and the other is to be laid before the bishops.

(4) Ten days after the meeting of consultors and irremovable rectors, the bishops of the province meet to discuss the merits of the candidates whose names have been recommended. The bishops can add names of their own choosing to the list. They then, after secret voting, make up the list to be sent to the Holy See by the archbishop or senior bishop of the province. By the Instruction of S.C.P.F. January 21, 1861, the bishops are bound to state in writing their judgment upon the qualifications and merits of those recommended.

(5) In the case of a coadjutor with right of succession the president of the meeting of the diocesan consultors and irremovable rectors is the bishop for whom the coadjutor is asked or his delegate.

(6) In the case of recommending candidates for a newly erected

diocese, as no body of consultors yet exists for that diocese, the names are to be recommended by the consultors of the diocese or dioceses from which the new bishopric is formed, together with the irremovable rectors of the new diocese.

#### § 4. *In other Countries*

39. To these three ways recognised by particular law must be added a fourth, viz. where only the bishops of the province recommend names to the Holy See. This manner of procedure seems of itself to be of a temporary nature and meant to give way to one of the other methods as the diocese advances to its normal state. Canada and Newfoundland still follow this plan, which used to obtain in the United States until after the Third Plenary Council of Baltimore.

40. The procedure in Australia is regulated by a decree of S.C.P.F. May 19, 1866, and a decree of the First Plenary Council of Australia confirmed by another decree of the same Sacred Congregation dated May 1, 1887. From them the practice can be deduced.

(1) Once in every three years the bishops send secretly to their metropolitan and to the Sacred Congregation the names of their priests whom they think worthy of the episcopate. The bishops, while living, should in writing appoint a priest, chosen from the consultors and irremovable rectors, whom they wish to administer the diocese *sede vacante*. Within fifteen days after the vacancy the administrator summons the consultors and irremovable rectors, and under the presidency of the archbishop or another bishop deputed by him, they, by secret vote, choose three names that the bishops of the province may have before them when they propose candidates to the Holy See. On an appointed day the bishops meet and discuss these three names and others proposed by themselves, and then draw up a list of all candidates; but if they reject the names sent up by the clergy they have to give their reasons to the S.C.P.F.

(2) In the case of an archbishop or his coadjutor all the other metropolitans of Australia have to be consulted.

(3) In the case of a coadjutor *cum iure successionis* the consultors and parochial rectors are summoned and are presided over by the archbishop, or by his delegate, or by the bishop for whom the coadjutor is to be appointed, or if these are prevented, by another bishop, also to be deputed by the metropolitan.

(4) In recommending names for a newly erected diocese the

archbishop shall summon the consultors of the diocese or dioceses from which the new diocese is formed, together with the parochial rectors of the new district.

41. In Scotland the procedure is regulated by a decree, July 25, 1883. In the case of dioceses without chapters the recommendations are made by the bishops, including the archbishop of Glasgow. If there be a chapter, the English method is followed. It is provided that the bishops can add other names to the capitular *terminum*.

42. In places where the privilege of formal recommendation does not hold, the S.C.P.F. acts according to its wisdom. Thus where there is no hierarchy of diocesan bishops, the superior of the mission makes a commendation or the Pope elects after consulting only with the S.C.P.F.

43. Prefects Apostolic (*q.v.*) are elected by the Cardinal Prefect of the S.C.P.F.

44. Titular bishops (*q.v.*) or coadjutors (*q.v.*) without the right of succession, are usually appointed on the recommendation of their ordinary, who is not obliged to advise with his chapter or diocesan consultors.

## ARTICLE V

### *The Consecration*

45. A bishop, elect and confirmed, has to receive the gift of consecration within three months of his election dating from the moment when he receives certain notice of his appointment. If he delay, without a just cause, he is bound to make restitution of the fruits of his benefice even without waiting for a declaratory sentence. Should he neglect to be consecrated for another three months—also without just cause—he is *ipso facto* deprived of his church. But this punishment requires a declaratory sentence.

46. Immediately a bishop is consecrated and takes up the administration of his diocese he vacates *ipso iure* all benefices which were in his possession; and these are, for that turn, reserved to the Pope. But this rule of vacating benefices does not apply to titular bishops.

47. Before consecration bishops are bound to make the profession of faith according to the form of Pius IV. and Pius IX. They have also, at their consecration, to take the consecration oath (*q.v.*) of fidelity and obedience to the Roman Pontiff.

48. The Pope has reserved to himself the right to consecrate bishops. He is accustomed, however, to give an elect the

privilege of choosing his own consecrator; though formerly *iure communi* the metropolitan had the right as regards his suffragans, who also enjoyed, by seniority, the same in respect of their archbishop. If the ceremony take place at Rome, one of the cardinals who has also the episcopal dignity, or one of the four patriarchs resident in the city, is to be invited to perform the ceremony; but if none of these accept, the elect can ask whom he wills: except in the case of a suffragan, who has to be consecrated by his metropolitan, should this prelate happen to be in the city.

49. The day for the consecration has to be chosen according to the rubrics. The ordinary days for consecrations are, first, Sundays; then the feast of an Apostle. By dispensation it can take place on any feast day.

50. For a valid consecration one bishop is necessary; for a licit consecration three are required, one of whom is called the consecrator and the other two the assistants or co-consecrators. The law requiring three bishops is not of divine but of ecclesiastical institution. Hence the supreme power can, if need be, dispense and allow a consecration to take place with only one bishop.

51. By consecration a bishop is made, in truth, the spouse of his Church and is joined to her by the bond of spiritual wedlock, *ratum et consummatum*.

## ARTICLE VI

### *Episcopal Jurisdiction in general*

52. As jurisdiction (*q.v.*) is of two kinds, ordinary and delegated, it will be well to treat the subject of episcopal jurisdiction in two separate sections.

#### § 1. *Ordinary Episcopal Jurisdiction*

53. The ordinary jurisdiction of a bishop is that right of ruling which is inherent in the episcopal office. It is clear that this right may be either *in potentia* or *in actu*: the former if the bishop have no actual flock assigned to him; the latter if the Supreme Pastor have assigned to him a diocese together with a flock therein to be ruled by him according to the common law of the Church. It is with this actual ordinary jurisdiction that we are now concerned.

Ordinary jurisdiction, then, is that which coheres with the office, and is derived from it either by law or by custom. Some canonists hold that a bishop can do in his diocese whatsoever the Pope can

do in the whole world, excepting of course those things which are expressly reserved to the Holy See. But Benedict XIV. says that there are sometimes matters, which, though not indeed reserved to the Roman Pontiff, by their nature either require the supreme power for dealing with them, or have been established by a higher authority. These do not, therefore, come under the episcopal jurisdiction.

*De Syn.  
dioc. IV.  
cap. 6*

54. The jurisdiction of a bishop can be divided into two classes according to the *forum* in which it is exercised.

(1) The jurisdiction of the *forum internum*, which is concerned with sacramental confession.

(2) The jurisdiction of the *forum externum*, which is exercised outside of that sacrament.

55. Again, the bishop's jurisdiction has to be distinguished according to the *modus* in which it is exercised.

(1) *Voluntary* jurisdiction, which is exercised without legal apparatus, and hence upon those only who are willing to submit to it.

(2) *Contentious* jurisdiction, which is exercised by judicial process and upon all and everyone subjected, even unwillingly, to the jurisdiction of the bishop.

56. This latter a bishop cannot use in his own cause, but he can avail himself of the former either directly or indirectly; hence the S.C.C. holds that a bishop, falling into a sin which he, by decree, has made a reserved case, can give faculties, to a priest to absolve him. But in cases, where the nature of the case or the law forbids, he cannot avail himself of his voluntary jurisdiction: *e.g.* he cannot bestow a benefice upon himself or absolve himself from censures.

## § 2. *Delegated Episcopal Jurisdiction*

57 The delegated jurisdiction which a bishop exercises comes to him from one who has it as ordinary jurisdiction. It does not come from the bishop's office, either by law or custom, but is a grant from another person. Hence it cannot be subdelegated. See DELEGATION.

58. Like ordinary jurisdiction the delegated jurisdiction is to be distinguished by the *forum* in which it is exercised, and also by the *modus*—that is, voluntary and contentious.

59. Besides his ordinary powers of jurisdiction, a bishop may have granted to him, either by common law or by special grant, official or personal, some of the higher powers now reserved to

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the Roman Pontiff. Many of these powers were at one time part of the episcopal ordinary jurisdiction. The Church, for wise reasons, has withdrawn these, and now only grants them by way of delegation. Hence the terms of the grant have to be weighed carefully, for the validity of the act may depend upon these delegated powers.

60. Among these delegated powers come the faculties granted by the S.C.P.F. to bishops under its jurisdiction. See PROPAGANDA FACULTIES.

61. The delegated powers concern mainly jurisdiction over exempt persons, especially regulars. As Boniface VIII. by the Constitution *Sacer ordo vester*, 16 Jan. 1298, freed regulars from the ordinary jurisdiction of the diocesan prelates and reserved them to the immediate and privitive jurisdiction of the Holy See, it is altogether unlawful for these regulars to submit themselves to the local ordinary in those matters which, by common law, are removed from his jurisdiction. But to meet difficulties arising in cases which need prompt arrangement, bishops have a delegated authority. See REGULARS.

### § 3. *Modifying Rules*

62. The following rules are commonly given for modifying episcopal jurisdiction.

63. Jurisdiction of any kind can only be exercised by a bishop over his own subjects: that is, over those who are such either by domicile or by quasi-domicile or by any act, whether concerning crimes or contracts, done in his diocese. But a person may become a subject temporarily for the *forum internum*, e.g. a traveller.

64. As regards orders, one may become the subject of a bishop in four ways:

- (1) By reason of a true domicile.
- (2) By reason of a true (not a chance) origin.
- (3) By reason of service and cohabitation for three years with the bishop.
- (4) By reason of the peaceful possession of a benefice within his diocese.

65. (1) Contentious jurisdiction cannot be exercised outside of a bishop's diocese without the leave of both the ordinary of the place and also of the litigants.

(2) But voluntary jurisdiction can be exercised anywhere as far as the validity of the act is concerned; and lawfully, if it be

done without publicity or the apparatus proper to the episcopal dignity.

(3) Both kinds should be exercised when the bishop is within his own diocese either *really* or by *legal fiction*.

(4) A bishop is present by legal fiction in his diocese when he is hindered from exercising his jurisdiction within the actual limits of his diocese and obtains the leave of the ordinary of the place wherein he finds himself.

*Cf. Benedict XIV. De Syn. dioec. I. cap. v.*

66. On the other hand, the person over whom jurisdiction is to be exercised can be present before the episcopal tribunal either really or by legal fiction, which occurs when a culprit has withdrawn from the diocese *per fraudem*, to avoid the law in two specified cases, viz. :

(1) To elude the Tridentine law concerning the necessary solemnities of marriage.

(2) Or to elude, so far as sacramental confession is concerned, the law affecting the reservation of some sin.

67. Before a bishop can validly exercise jurisdiction he must possess it *in act*, truly and *in se*, or at least according to the mind and the permission of the Church, *e.g.* in cases of *títulus coloratus*, together with the common error of the people.

Urban VIII. Constit. *Exponi*, 1626  
Clement X. Constit. *Superna*, 1670

68. Whatsoever is contrary to the laws of a superior authority or whatsoever is reserved to a superior authority is, as a rule, beyond episcopal competence *in se*, except in cases recognised by law.

## ARTICLE VII

### *Episcopal Jurisdiction in foro externo*

69. Episcopal jurisdiction *in foro externo* is, with the exceptions mentioned above, full and complete. It comprises the power of making laws (*q.v.*) (*potestas legifera*), the power of passing sentence (*potestas iudicialis*), the power of enforcing sentences (*potestas coactiva*), and the power of administering the goods of the Church (*potestas administrativa*). Each of these requires a separate section.

#### § 1. *The Power of Law-making*

70. As the bishop is the ruler and pastor of his diocese, the power of making a law (*q.v.*)—that is, of providing for the due welfare of his flock—must necessarily belong to him.



71. He can do anything that is useful and necessary for the spiritual profit of his people, provided it be not contrary to the general law of the Church or to the order of the Holy See.

72. He can make laws either in or out of Synod (*q.v.*).

73. He has the right to change, to abrogate or to dispense from all laws, whether made by himself or his predecessor, provided that they have not been confirmed by a superior authority. He cannot, however, interfere with those of his own laws which he himself has sworn to observe.

S.C.C.  
13 July,  
1763

74. He can abolish the particular customs of his diocese if it be for the welfare of the Church. But this demands prudence, especially if the rights of a third party be involved.

Benedict  
XIV. *de*  
*Sacr. Mix.*  
III.

75. He cannot abolish the universal customs of his diocese; for these now belong to the common law.

76. He can lay particular precepts on persons subjected to him.

77. He can dispense *a iure communi* individuals in the cases allowed by common law. For instance :

(1) If he expressly have the faculty of dispensation.

(2) If in the text of the law it is simply said *dispensari posse* without mentioning the bishop or anyone else; or *nisi fuerit dispensatum* or *donec dispensetur*. The exception to this is in the case of matrimonial dispensations.

(3) If there be the custom of issuing certain dispensations, *e.g.* if each bishop dispense in his own diocese from laws promulgated in a Provincial Synod.

(4) If there be no easy *recursus* to the Pope and there be grave danger in delay.

(5) In doubtful matters, especially if the doubt be whether the matter requires dispensation, or whether there be sufficient cause for dispensation. Should it appear afterwards that there had been need of a papal dispensation, writers of weight hold that that given by the ordinary is sufficient.

(6) Lastly, in cases which often occur, or in matters of slight moment, or in such as are of daily occurrence, such as fasts, feasts, hours.

Benedict  
XIV. *Con-*  
*stit. In*  
*Suprema*

78. He can dispense an individual from fasts for a lawful cause, the people for a very grave and urgent necessity, and only for a single occasion.

79. A bishop can do all that is necessary for the welfare of the diocese. Hence :

- (1) He can appoint vicars general and foran.
  - (2) He can institute parish priests (*q.v.*) after *conkursus* (*q.v.*), and also rectors to churches.
  - (3) He can appoint managers or administrators to these if necessary.
  - (4) He can delegate particular business or cases to those whom he judges to be fit for offices.
  - (5) He can promote his subjects to ecclesiastical orders.
  - (6) He can duly institute pious gilds or confraternities.
  80. He can use his clergy for the good of the diocese, and can take two of the canons of his cathedral chapter for his own service.
  81. He can collate to the ecclesiastical benefices of his diocese, save in cases of reservation (*q.v.*), devolution (*q.v.*), *conkursus*, or where there are rights belonging to a third person.
  82. He can erect new benefices. He can also abolish, divide, and unite individual benefices, except in cases where they are exempt, or where they are perpetually reserved or affect the rights of some third person.
  83. But he cannot, in synod or out of synod, unite benefices to his own *mensa* or to the cathedral chapter or to the fabric or to the sacristy of his cathedral.
  84. He cannot unite parochial benefices to monasteries or to dignities.
  85. He cannot join parochial benefices with those which have not cure of souls; still less can he change them into simple benefices.
  86. He cannot change benefices which are under rights of patronage into free benefices, unless the patron renounce his rights or by agreement, or unless a parish could not be provided for otherwise.
- N.B.—In all matters concerning benefices strict heed must be taken to the laws affecting alienations (*q.v.*); for suppressions, divisions and unions are *odiosa* and are considered as alienations. Hence, in order that any change be valid, it can only be done (1) for the great and evident necessity or utility of the church affected thereby; (2) after hearing all parties concerned; (3) with the consent of the chapter unless the bishop proceed as Apostolic delegate, or custom otherwise warrants.
87. A bishop can grant indulgences with the limits required by law. Bishops are allowed to grant fifty days of true indulgence.
  88. A bishop can grant favours and privileges which are not

S.C. Con.  
24 Feb.  
1872

against the common law or not opposed to the reservations made by the Pope.

89. He can order prayers (*orationes imperatæ*) to be added to the Mass.

90. He can appoint days of fasting.

91. He can give licences to preach.

92. He can authenticate relics. *See AUTHENTICATION OF RELICS.*

93. Finally, he can do everything which he may judge necessary for duly feeding his flock and for safeguarding divine worship according to the circumstances of time, place, and the common law.

### § 2. *The Power of Passing Sentence*

94. The general rule is that the bishop, saving the right of appeal to his superior, can take judicial cognisance in his diocese of all causes belonging to the ecclesiastical tribunal.

95. But there are certain causes in particular which the bishop cannot judge, such as :

(1) The causes of faith, concerning which the bishop cannot define anything, but can only *in foro externo* decree what to him may appear necessary for removing scandals.

(2) Those more difficult cases which require the declaration of the supreme authority or even his power to enforce execution.

(3) Certain cases, such as beatification or canonisation, which involve a jurisdiction over all the Church.

(4) All matters which concern changing or correcting the Breviary and the Missal ; approving, reforming, or abolishing religious orders or judging their causes.

(5) Also the judicial trial of causes which affect the bishop himself, either personally or as to his church or *mensa*. These last may be tried by the vicar general, together with a judge nominated by the bishop, as one trusted by the accuser, should the vicar general be liable to the suspicion of partiality.

96. On the other hand, there are matters which so belong to the bishop that it is not lawful to make appeal (*q.v.*) from his sentence *in suspensivo* but only *in devolutivo*, or by extra-judicial *recursus* to the Holy See. Of this kind are causes arising from the decrees of visitation, in all that concerns divine worship, the cure of souls, the administration of the sacraments, the correction of morals, and whatever the bishop decrees extra-judicially.

Benedict  
XIV. *de*  
*Synod.*  
*Dioc.* vii.  
cap. 8

Benedict XIV. (in Constit. *Ad militantes* 30 March, 1742) gives the cases in which there is no appeal *in suspensivo* :

(1) In all causes the execution whereof the Council of Trent gives to ordinaries *appellatione remota*.

(2) In all decrees concerning divine worship and the celebration of Mass.

(3) In all decrees concerning ecclesiastical rites.

(4) In all decrees concerning the cure of souls and administration of the sacraments.

(5) In appointing vicars and assigning them a stipend in united parishes.

(6) In visitation of parishes, even if exempt, and in decrees concerning divine worship and the cure of souls.

(7) In decrees made for the better service and ruling of the parishes.

(8) In the correction of parish priests or curates.

(9) In translating benefices and in decreeing the restoration of churches.

(10) In providing for the case of non-residence on the part of those charged with the cure of souls.

(11) In denying, suspending, or limiting faculties for hearing confessions.

(12) In making boundaries or instituting parishes.

(13) In appointing a manager (*oeconomus*), in fixing the *concursum*, and providing for parishes.

(14) In decrees concerning preaching the word of God, or public lectures connected with the same.

(15) In visiting and correcting anything concerned with the cure of souls or the administration of the sacraments.

(16) In decrees and provisions concerning the enclosure of nuns and their spiritual and temporal ruling.

(17) In visiting the monasteries of the diocese where regular observance is not duly kept, and in the execution of his decrees concerning this matter.

(18) In examining those who are to be instituted to or confirmed in benefices.

(19) In refusing to promote to orders, or in suspending *ob occultum crimen*.

(20) In fixing a period for the *punitio regularis* of a guilty person, either in or out of the cloister.

(21) In proceeding against those living in concubinage.

(22) In depriving a cleric of the privilege of the *forum* &c.

- (23) In approving or rejecting a title for promotion to orders.
- (24) In convoking the chapter.
- (25) In instituting and dividing the distribution (*q.v.*).
- (26) In executing pious bequests.
- (27) In visiting pious places, colleges, gilds, &c.
- (28) In decrees demanding accounts of those who administer ecclesiastical goods.
- (29) In examining, removing, or suspending notaries ecclesiastic.
- (30) In erecting a seminary, levying taxes, uniting benefices, and in other things concerning the due ruling and support of the seminary.
- (31) In decrees concerning the account to be given of the administration of the see during vacancy.
- (32) In censures and their release.
- (33) In carrying out all things which have to be executed by ordinaries.

### § 3. *The Power of Coercion*

97. The power of making laws naturally includes the power of enforcing the observance of these laws and of punishing transgressors. Hence a bishop has the necessary power of coercion and can use it whenever and in such ways as are useful for the due ruling of his flock.

98. He can *de iure* proceed against ill-doers by penalties both spiritual and temporal. But he should take heed that he is also a father as well as a judge, and that, in the words of the Council of Trent, judgment is to be tempered with mercy and severity with mildness.

Sess. xiii.  
c. 1, d. r.

99. The spiritual weapons at his disposal are excommunication (*q.v.*), suspension (*q.v.*)—both after sentence and *ex informata conscientia* (*q.v.*)—and interdict (*q.v.*), monitions (*q.v.*) and precepts (*q.v.*) and the milder forms of retreats, &c.

100. The bishop can also make use of pecuniary fines as punishment for faults committed and proved in his *forum externum*, and such fines have to be assigned to pious uses. But he cannot commute a canonical punishment into a pecuniary fine.

101. The Council of Trent lays down that censures should not be inflicted rashly or for slight causes, lest they become more despised than feared and produce ruin rather than safety. Hence it enjoins on all ecclesiastical judges, of whatsoever dignity they may be, that in all cases, criminal and civil, both during the

proceedings or trial and in giving judgment, they abstain from ecclesiastical censures as often as pecuniary fines can be imposed and collected ; and only when such fines cannot be easily imposed shall it be lawful for ecclesiastical judges to employ censures, provided, however, that the character of the crime so require and that there be contumacy and after due trial.

Sess. xxv.  
c. 3, d. 7.

102. It must be remembered that the imposition of pecuniary fines is also open to danger. To impose them unless they can be enforced exposes authority to contempt. There is also the danger of abuse. But this is prevented by the legislation of the Church which is directed against the possibility of extortion or of perverting justice. Hence fines inflicted as temporal punishments by a legal sentence cannot be appropriated by the judge, nor can they be used for paying the salary of the officials of the court, nor for the fabric of the cathedral nor for repairs of the episcopal residence. They are looked upon as sacred and must be applied solely to pious and charitable purposes, such as hospitals, orphanages, &c. They are also, says Benedict XIV., to be put into the hands of a special treasurer, whose accounts shall show that they have been applied to charitable uses.

*De Synodo  
Diocesa-  
sana*, x.  
c. 10, n. 5

103. The bishop can also use the temporal punishments of imprisonment and exile. But the S.C.P.F. recommends that clerics, who have fallen and show solid signs of repentance, should be sent to some religious house for a period to be fixed by the bishop, to live there under religious discipline. As regards exile, a bishop may inflict this punishment either partially, *i.e.* exile from some particular city or place, or wholly, *i.e.* from the diocese.

Third  
Plenary  
Council  
of Balti-  
more, n. 77

104. But in all punishments, especially those of a temporal nature, prudence demands that circumstances of persons, times and places be taken into account before proceeding to inflict them.

#### § 4. *The Power of Administration*

105. The bishop has the care and guardianship of ecclesiastical goods. He is not the owner, and cannot dispose of them at will.

106. In accordance with the provisions of the law he must do what is necessary for the safe keeping of the church property, and for handing it over to his successor.

107. In administration (*q.v.*) the bishop must carefully observe the Church's laws concerning alienation (*q.v.*).

108. The bishop rules and governs his church in all things which are spiritual or are connected with spirituals, excepting

only such things as are exempt, either by common law or pontifical decree, from his jurisdiction. Such exemptions have to be proved, not presumed.

109. Hence it is part of his administrative duty :

(1) To erect, suppress or confer benefices.

(2) To elect candidates for the ministry.

(3) To watch over ecclesiastical property.

(4) To provide for the execution of pious wills.

(5) To correct any abuses concerning images and relics that may creep in.

(6) To watch over the administration of the sacraments and the celebration of divine worship and the decency and ornamentation of churches and oratories.

110. He also has the duty of providing for the religious instruction of children and catechumens ; and a notable part of his administration would seem, nowadays, to be the watching over the education of youth in primary and secondary schools, and the safeguarding of parental rights.

111. He has to see that the ecclesiastical buildings of his diocese are erected in accordance with the rules of the Church and are kept in repair. He can also compel those who are obliged to make the necessary reparations (*q.v.*).

112. In his administrative capacity he can unite benefices, make or divide parishes even against the consent of the rectors.

113. He can proceed against regulars, even exempt, who reside outside of their monastery or quasi-monastery, or who are apostates from religion.

114. He can also proceed by censure and interdict against regulars if they admit in their churches anything unbecoming.

115. All new foundations for monasteries within his diocese require his leave for their canonical existence ; and houses which have not at least six religious are *iure communi* subject to his visitation and jurisdiction. But 'regulars dwelling in residences on the mission are exempt from the jurisdiction of the ordinary, no less than regulars living within cloisters, except in cases expressly mentioned by law, and, speaking generally, in those matters that have reference to the cure of souls and the administration of the sacraments.'

Leo XIII.  
Constit.  
*Romanos*  
*Pontifices*

Trent,  
Sess. xxv.  
cap. 9,  
*de reg.*

116. Monasteries of nuns (*q.v.*) immediately subject to the Holy See are to be governed in spiritual by the bishop, who has also power over the confessors and administrators of the goods of the nuns.

117. In all the more weighty affairs of administration the bishop is bound to obtain the consent of his chapter.

#### ARTICLE VIII.

##### *Episcopal Jurisdiction in foro interno*

118. To the bishop belongs the power *in foro interno* :

(1) Of granting approbation (*q.v.*) for sacramental confessors within his diocese.

(2) Of examining candidates.

(3) Of limiting the grant of faculties.

(4) Of recalling them.

(5) Of subjecting those once approved by himself to a new examination should cause arise.

(6) And of re-examining, even without cause, those approved of by his predecessor.

119. He can also reserve cases : that is, withhold to himself the power of absolution from certain of the more serious crimes *opere externo consummatis*. This he can do either in or outside of Synod. But he should be careful to reserve only a few cases ; and especially should he refrain from reserving, without necessity, those which have attached excommunication *ex iure*. Also he should not prescribe anything that would endanger the seal of confession.

120. It belongs also to the bishop to dispense in all irregularities and suspensions arising *ex delicto occulto*, excepting that which arises from wilful murder and those coming from matters before the contentious tribunal.

121. In certain hidden cases, even if reserved to the Holy See, he can *per se* or by deputy absolve *in foro interno* and *gratis* delinquents who are subjects of his diocese. This power granted by the Council of Trent obtains everywhere ; for *onerum et favorum par est ratio*. The Constitution *Apostolicae Sedis* confirms this decree, excepting only cases which are reserved *speciali modo* by the Holy See. For such cases bishops should consult the special faculties granted by Propaganda. To these exceptions must be added two others, namely :

(1) The interdict pronounced against universities, colleges, and chapters appealing to a future General Council against the ordinances of the existing Pope.

(2) False denunciation of a priest for solicitation (*q.v.*).



## ARTICLE IX

*Episcopal Privileges*

**122.** The privileges attached to a diocesan bishop are defined by common law. Besides the episcopal *insignia*, which are common to all who enjoy the episcopal dignity, there are special marks of honour due to the bishop in his own diocese : such as the use of the throne, the pastoral staff, &c. For these honorific privileges the *Cæremoniale Episcoporum* can be consulted.

Benedict  
XIV.  
2 June,  
1751 ;  
S.C.R.  
22 Aug.  
1818  
S.C.R.  
2 July,  
1661

**123.** Bishops have the right to the portable altar, not only for themselves, but, on the more solemn feasts, for hearing another Mass. *See* PORTABLE ALTAR.

**124.** They can have in their episcopal residence a fixed oratory in which they and others can say Mass. It is of the nature of a public oratory and the precept of hearing Mass can be there fulfilled even if the bishop be absent or the see be vacant. And in the same house there may be several oratories all enjoying the same privilege. But this belongs only to diocesan bishops ; and the term 'house' applies only to the habitual residence, not to a country house.

**125.** They have also the privilege, when outside their own diocese, of choosing a priest as confessor and taking him about with them ; but if he be not their own subject he must be approved of by the ordinary of the place.

**126.** They can have two canons of the chapter in their service ; and these canons enjoy the fruits of their prebends even though absent from choir.

**127.** They can use the *insignia* of their dignity in all places, even exempt, of their diocese.

**128.** They do not incur suspension or interdict *iure latum* unless express mention be made of them.

**129.** Their word alone is to be believed in court without oath.

**130.** They can grant by leave of Pius X. f.r. fifty days' indulgence, and one year at the dedication of a church.

Trent,  
Sess. xiii.  
cap. 8. d. r.

**131.** The graver causes of bishops can be tried only by the Roman Pontiff.

**132.** They can celebrate and allow their chaplains to celebrate Mass one hour before daybreak or one hour after noon in the domestic chapel for their own convenience or for that of the household.

**133.** When ill, the last sacraments are to be administered to

them by the first dignitary of the chapter. But the S.C.C., on June 7, 1760, declared that the bishop could choose whom he preferred for the anointing.

N.B.—Those episcopal privileges which consist in the faculty of doing something are not lost by non use.

## ARTICLE X

### *Bishops and Regulars*

134. The bishop, in his relations with the regulars of his diocese, has to take into consideration the exemptions which they enjoy ; and while they are bound not to infringe upon the rights of the diocesan, he, also, must respect theirs. For, as Leo XIII. says : ‘ Religious communities, which by common law ought to be immediately subject to the bishops on account of their hierarchical pre-eminence, and to the Supreme Pontiff by reason of the Papal Primacy, have remained under the authority of the latter, and have by privilege passed out of that of the bishops.’

Constit.  
*Romanos*  
*Pontifices*,  
1881

135. The same Pope gives the following reasons for the exemption : ‘ . . . The better to connect and fit together all things appertaining to the religious orders and to secure for each of their members a quiet and orderly method of life ; in order, lastly, to provide for the increase and perfecting of *religious conversation*, the Roman Pontiffs, whose right it is to fix the limits of dioceses and to assign to the head of each diocese the subjects to be ruled by his sacred authority, has ordained, not without reason, that the regular clergy shall be exempted from the jurisdiction of the bishops. The reason for which ordinance is grounded, not on any wish that the religious bodies should enjoy a higher position than the secular clergy, but on the circumstance that their houses are regarded by a legal fiction as if they were territories cut off from the diocese in which they are placed.’

*Ibid.*

136. ‘ But since as a matter of fact the religious lead their lives within the limits of a diocese, the action of this privilege has been so far modified as to preserve intact diocesan discipline, so that in many things the regular clergy must be subject to the bishop’s authority, whether ordinary or delegated.’

*Ibid.*

137. Hence the exemption of regulars is not absolute, but is bound by certain laws ; and as the privilege is to the detriment of episcopal jurisdiction, it has to be strictly interpreted.

138. There are many cases in which it is necessary for the local

authority to have power to act, so the Council of Trent has granted to bishops delegated authority to meet the necessity. A distinction, therefore, must be made between the cases in which a bishop proceeds against regulars by his delegated authority and those in which he uses his ordinary jurisdiction. In the latter case the appeal from his sentence lies to his immediate ecclesiastical superior, *e.g.* to the metropolitan; in the former there is only a recourse to the Holy See.

**139.** Among the principal cases in which the Council of Trent and certain Popes have given authority to bishops over the regulars of his diocese are the following :

- |   |  |
|---|--|
| Sess. v.<br>cap. 2                              | (1) Heretical preachers.   |
| Sess. vi.<br>cap. 3, d. r.                      | (2) Power of visitation and correction in case of regulars living out of their monastery.  |
| Sess. xxv.<br>cap. 5                            | (3) The enforcing of enclosure of nuns.  |
| Sess. xxii.<br>cap. 5                           | (4) Taking summary cognisance of dispensations obtained <i>gratiose</i> from the Holy See.   |
| Sess. xxv.<br>cap. 11                           | (5) In rights of visitation concerning seculars who are not <i>de familia</i> and yet live under the cure of regulars.   |
| Sess. xxiv.<br>cap. 2                           | (6) As regards attendance at Synod if the regulars are not under a general chapter or if they have parochial cures.  |
| Sess. xxiii.<br>cap. 15                         | (7) As regards hearing confessions of seculars, and of priests or nuns subjected to them.  |
| Sess. xxv.<br>cap. 10                           | (8) As regards the provision of extraordinary confessors for even exempt nuns two or three times a year if the regulars neglect.   |
| Sess. xxv.<br>cap. 4;<br>Sess. v. c. 2          | (9) As regards preaching: in their own churches regulars require the blessing of the bishop; in other churches, besides the licence of their superiors, the bishop's approbation is also needed. |
| Sess. xxiii.<br>cap. 12                         | (10) As regards the reception of orders: concerning age, interstices, and examination.   |
| Sess. xxi.<br>cap. 1                            | (11) As regards begging.   |
| Sess. xxv.<br>cap. 4                            | (12) As regards due punishment of those living outside the monastery without the written leave of their superiors.   |
| Sess. xxv.<br>cap. 13;<br>Sess. xxv.<br>cap. 13 | (13) As regards the obligation of attending public processions, excepting religious dwelling in the stricter enclosure, or living beyond a mile from the city.                                   |
| <i>Ibid.</i>                                    | (14) As regards precedence.  |
|   | (15) As regards observance of feasts of obligation.  |
|   | (16) As regards publication and observation of censures.   |
| <i>Ibid.</i>                                    | (17) As to observance of interdict.  |
| <i>Ibid.</i><br>cap. 12                         | (18) As regards solemn or public exposition of the Blessed Sacrament.  |

- (19) As regards the due celebration of Mass. Sess. xxii.
- (20) As regards new fashions of images in churches; new relics; or publication of new miracles. Sess. xxv.
- (21) As regards publication of indulgences. Sess. xxv. cap. 9.
- (22) As regards absolving from cases reserved to the bishop. Clem. X. Constit.
- (23) As regards the election of abbesses. *Superna*, 1670.
- (24) As regards the examination of a woman before religious clothing and profession. Sess. xxv. cap. 17, 18.
- (25) As regards the safeguarding of the property of a novice. *Ibid.* cap. 16.
- (26) As regards visitation of confraternities and inquiry as to their administration.
- (27) As to the erection of confraternities.
- (28) As regards construction of oratories in non-exempt places and celebration therein of Mass; also as to celebration in private oratories on days that are forbidden. Clem. XII. Constit. *Quoniam Sancta*
- (29) As regards punishment for soliciting in confession. Greg. XIV.
- (30) As regards violation of ecclesiastical immunity. Constit.
- (31) As regards the marks of respect due to the episcopal office; in case of refusal, the bishop can, without monition, interdict the church. *Cum alias*, 1591. S.C.C. 26 Jan. 1697.
- (32) As regards exorcisms (*q.v.*). Leo XIII.
- (33) As regards the laws of the Index. Constit.
- (34) As regards erection of new monasteries. *Officiorum ac Mun.* 1896.
- (35) As regards co-judgment with the local superior in cases of nullity of profession. Sess. xxv. cap. 19.
- (36) As regards punishing scandalous delinquents whom their own superiors, after a term fixed by the bishop, neglect to punish.
140. The relations in missionary countries between bishops and regulars have been defined by Leo XIII., of glorious memory, in the Constitution *Romanos Pontifices* of 1881, and from this document the following points are clear:
- (1) Regular rectors of missions are bound by their office to attend the conferences of the clergy; and also vicars and other religious holding ordinary missionary faculties and those living in residences and in small mission-houses shall do the same.
- (2) As regards attendance at synod, the Tridentine law is renewed: 'Those who have charge either of parochial or other churches of seculars, even if annexed, whoever they may be, are bound on account of the said churches to be present at the synod.'
- (3) As regards appeals from synodal decrees, regulars can only appeal *in devolutive*, in cases which by common law, either ordinary

or delegated, affect them ; in other cases the appeal is, on account of the exemption enjoyed by regulars, *in suspensivo*.

(4) As regards division of missions : the bishop can divide those which are really and truly parishes if he observe the provision of the Council of Trent. These legal formalities are not required in the case of simple missions ; but the decrees of the First Westminster Synod on the division of missions (*q.v.*) are to be observed. But the superior of the Order is to be consulted, and any appeal from the bishop's decrees in this matter is *in devolutivo*.

(5) In the new mission so formed there is no obligation that it should be entrusted to a regular ; for in case of parishes regulars are so strictly inhibited from accepting the office of parish priest that, before accepting it, they require the leave of the Holy See. And in the case of missions, while the law does not forbid the rector being chosen from regulars, it does not favour their claim to be chosen in preference to others.

(6) The bishop has rights of visitation over all public cemeteries and public pious places in a mission ; but not over those which are solely for the use of regulars.

(7) The bishop has the rights of visitation over the schools of the mission, *i.e.* the elementary or parochial schools ; but not those other schools or colleges in which religious men, according to the rules of their order, devote themselves to the education of Catholic youth.

(8) New schools, houses, colleges, or churches are not to be opened without the leave of the local ordinary and of the Apostolic See. Nor are those already erected to be changed to other uses without the expressed permission of the local ordinary and of the Apostolic See.

(9) As regards temporal goods of the mission, the law of Propaganda (19 April, 1869) is to be observed, viz. : (a) Missionary regulars are not bound to give an account to the bishop of temporal goods belonging to them as regulars. (b) The bishop, however, has a right to exact from the said missionary regulars, just the same as from the priests of the secular clergy, an account of those goods which have been given to the mission or to the regulars *with a view to the mission*.

N.B.—The same Congregation, 10 May, 1868, gave orders that a careful account of the property of the mission, as separate from that of the regulars, be kept ; and Pope Leo renewed the regulations of the Second Provincial Synod of Westminster concerning ecclesiastical property given *intuitu missionis*.

## ARTICLE XI

*The Burden of the Episcopate*

141. The honour of the episcopate entails the burden of the pastoral office and the necessity of taking heed to the flock in all its wants.

142. Two special obligations are incumbent upon a bishop when he undertakes his charge : (1) He has to make, before the Apostolic See, profession of his faith according to the Constitution of Gregory XIV. *Onus apostolicae*, May 15, 1595. This he can do by procurator. (2) He has to swear, at his consecration, fidelity to the Roman Pontiff.

143. The principal acts of the episcopal office, besides those already discussed, are ordinations (*q.v.*), confirmations (*q.v.*), synods (*q.v.*), preaching (*q.v.*), offering Mass *pro grege* (*q.v.*), residence (*q.v.*), visitation (*q.v.*), visit *ad limina* (*q.v.*), and dispensing justice and graces.

## ARTICLE XII

*The Power of Taxation*

144. By common law the bishop has certain rights of taxation. These are for individual cases or concern the whole diocese.

145. The bishop can and should have a tariff of alms and of fixed chancery fees for the issue of certain dispensations and the expenses therein concerned. He is obliged in this to follow the *Taxa Innocentiana* (*q.v.*) of 1628, taking into consideration the circumstances of times, places, and persons.

146. The charges concerning the whole diocese are ordinary or extraordinary.

147. Among the ordinary taxes are the *cathedraticum* (*q.v.*), and procuration (*q.v.*). There were other rights, which, however, are now generally obsolete.

148. The extraordinary taxes are the subsidy of charity (*q.v.*), the *census* (*q.v.*).

149. The bishop can ask for contributions from all his diocese, clergy and laity, for the needs of the diocese ; and these should not be looked upon as taxes in the strict sense of the word, but, as far as possible, as voluntary contributions and the fulfilment of the ordinary law of the Church.

150. The bishop has the right to make a tax for the support of

the seminary, when the usual funds are insufficient for the same. This tax, and also the *cathedraticum* and procuration, are called old taxes, as being recognised by common law. He cannot increase these without leave of the Holy See.

III. Lateran, c. 7

151. As regards new ordinary taxes, viz. taxes which are not recognised by common law, the bishop has no power to impose them without the leave of the Holy See.

152. The laws relating to new extraordinary taxes are :

(1) There must be a sufficient cause: *e.g.* for the expenses attached to the promotion to the episcopate, for making the visit *ad limina* or for attending a General Council (*q.v.*).

(2) The cause must be stated clearly and openly.

(3) The tax must be moderate.

(4) It can only be imposed when the other episcopal sources of income are insufficient to meet the special case.

(5) The consent or, at least, the advice of the chapter or diocesan consultors must be asked.

(6) The leave of the Holy See has to be obtained, except in cases where such a contribution is asked for the expenses connected with promotion to the episcopate.

(7) The tax is to be demanded *cum charitate*.

### ARTICLE XIII

#### *Resignation*

153. A see once canonically accepted can only be voided lawfully by death, resignation, translation, or degradation (*q.v.*). Here we treat of resignation.

154. Resignation is the act by which a bishop of his own free will and for just causes, gives up, with the consent of the Pope, his see and sometimes also his dignity.

155. The causes justifying resignation are contained in the following verses ascribed to Pope Innocent III. :

*Debilis ; ignarus ; male conscius ; irregularis ;  
Quem mala plebs odit ; dans scandala, cedere possit.*

(1) *Debilis* : *i.e.* weakness of body coming from old age or infirmity. Innocent III. remarks that only that weakness which makes a bishop impotent to fulfil his office is a legitimate excuse. Old age itself is not a sufficient excuse. Alexander III. rejected the resignation of a bishop in these words : ' Vigour of devotion and faith has not weakened in you, although your body has grown

older ; for while the bodily state is tending downwards fervour of spirit can yet ascend to higher things.'

(2) *Ignarus* : i.e. a want of the necessary knowledge, made known by experience.

(3) *Male conscius* : i.e. the conscience of an admitted crime which, even after penance, will not allow a bishop's ministry being held in honour. The crimes are, murder, simony (*q.v.*) and any crime which brings infamy.

(4) *Irregularis* : i.e. the conscience of an irregularity which is not usually dispensed.

(5) *Odium malae plebis* : i.e. when the bishop finds that by reason of the hardness of heart in a wicked people he can do no good ; but that if he resign there is hope that they will listen to another prelate.

(6) *Grave scandalum* : i.e. the scandal which a flock suffers from the conduct of the bishop, and can only be removed by the resignation of the offending pastor. Innocent III. distinguishes between pharisaical scandal, which is to be despised, and the scandal of the little ones, which is to be respected.

156. Bishops can resign only to the supreme pastor.

157. Bishops, as a rule, only make resignation of both see and dignity when they intend to embrace the religious life, or to prevent the institution of a judicial process.

158. After resignation of both see and dignity, bishops cannot lawfully perform any episcopal functions even with the leave of the diocesan ordinary ; but their ordinations and confirmations are valid on account of the permanence of the character.

159. But bishops who resign only their sees for any cause may lawfully exercise pontifical functions at the desire or with the leave of the ordinary.

160. On the other hand, a bishop, who has resigned both see and dignity for the sake of embracing the religious state, can be elected to any church.

161. Also one who has resigned his see, say, for health, can, when the impediment ceases, be again re-elected to his former see, provided that his previous election was in no way tainted with simony.

162. Resignation of a see is a formal act, and has to be executed either in person or by a procurator (*q.v.*) specially charged with an authentic document for this purpose. If the procurator exceed his mandate the resignation is null and void.

163. Resignation takes effect as soon as the Pope accepts



it; but the bishop only ceases to act lawfully as ordinary when he has received due notice of its acceptance.

#### ARTICLE XIV

##### *Translation*

**164.** Translation of a bishop is the change from one see to another made by lawful authority.

**165.** The translation of bishops, as implying the dissolving of the bond of spiritual matrimony which binds a bishop to his church, is among those greater causes which, says Innocent III., are reserved by divine institution to the Pope. This applies even when it is the case of a bishop who has not yet received the gift of consecration.

**166.** The causes which justify translation are two in number :

(1) *Utility*: which is found, for instance, in the case of a bishop who, having extraordinary talent, is in a small diocese and can be more usefully employed elsewhere; or when he has the misfortune to be on bad terms with his subjects and there is a probability of his succeeding better elsewhere.

(2) *Necessity*: which is found in persecution, or in the *odium malae plebis*, or in ill health.

**167.** The consent of the bishop to be translated is generally held to be necessary. Nevertheless, although some canonists hold that the Pope can force a bishop to give up one see and take another, and that his pertinacious obstinacy is a sufficient cause for dissolving the bond which joins him to his see, yet the Pope does not oblige the bishop to accept another see; for, as a rule, the Roman Pontiffs do not translate bishops against their wills.

**168.** Besides a just cause there is an order to be observed in translations. Hence, ordinary translation is made from a lesser to a greater see, as it is not fitting that the greater should be made less. Santi remarks that if it be determined that some one be translated, it is to be understood of a change to a greater, not to an equal. It is an extraordinary procedure, sometimes warranted by necessity, when translation is made to an equal or to a lesser see.

**169.** The effects of the translation of a bishop are as follows :

(1) If he be translated with his own consent, he loses ordinary jurisdiction in his old diocese from the moment he receives *certain* information that his translation has been decreed.

(2) The certain information may come in any way that is reliable. Hence, in countries under Propaganda as the bishops are appointed by breve and the Pope's consent takes the place of the elective and confirmatory act of the Papal Consistory, so the Pope's consent to the proposed translation gives it immediate effect as soon as any certain knowledge arrives. It is not necessary to wait until the Apostolic letters are expedited and received.

Cf. Urban VIII. Constit. *Nobis nuper*, 20 March, 1625; Sangiunetti, p. 229

(3) The vacation of the first diocese takes place before taking possession of the new one.

Sebastianelli, vol. i. p. 335

(4) From the fact that the first diocese becomes vacant from the moment that the Pope accepts the translation, it follows that the bishop at once loses his right to collate to benefices; for being no longer *de iure* bishop or administrator of the diocese he has on power to dispose of the property thereof.

(5) Hence, as soon as he knows that the question of his translation is before the Holy See he should abstain from any act that may prejudice his successor.

(6) As soon as the certain knowledge arrives in any way to the bishop and chapter, and the see thereby becomes vacant, the administration passes at once to the chapter, who *de iure* proceed to elect a vicar capitular (*q.v.*).

Urban VIII. in Constit. cit.: Ferraris, p. 93

(7) The income of the see from which a bishop is willingly translated is only his up to the moment when the Pope agrees to the translation. If he make use of it after he ceases to have the right he is subject to the obligation of restitution.

(8) But the translated bishop can take with him the income already received and such moveables as were bought by the same income, provided that they have not been already given over to the church.

Reiffens-tuel, Tit. *de Translat. Ep.* n. 44

(9) The Second Plenary Council of Baltimore seem to hold, and rightly too, that the *cathedraticum* received, being part of the yearly income of the see, should be divided *pro rata* between the outgoing and the incoming bishop.

n. 100

(10) The translated bishop, as soon as he receives in any way certain knowledge of the fact, has the *ius* to his new diocese, though he cannot take actual possession until he has shown the Letters Apostolic to the chapter or other diocesan authority *sede vacante*.

## ARTICLE XV

*Particular Laws*§ 1. *Missions*

170. The bishop with the advice of the chapter or diocesan consultors may establish new missions in any portion even of a missionary rector's district. The First Council of Westminster says :

‘To forestall any question that may arise, we declare that the bishop, with the advice of his chapter, and in spite of the deputation of the missionary rector, may build new churches within the limits of his district and give them a portion thereof, should necessity or utility in regard to the faithful demand it. But these limits let the bishop take care to have defined as soon as possible.’

xiii. 5

III. Balti-  
more,  
n. 20

Constit.  
*Romanos*  
*Pontifices*;  
cf. also  
III. Balti-  
more,  
n. 20

171. Leo XIII. willed and ordained ‘that the opinion of the rector shall likewise be asked for; which laudable practice, as we are informed, is already customary.’

172. The same power of dividing missions obtains in those that are served by regulars; and, according to the same Constitution, the superior of the order in question has to be consulted.

173. The appeal against the bishop's sentence of division is *in devolutive*.

174. The bishop is to be consulted before any alienation or notable additions in regard to church property be made by even missionary rectors.

175. The bishop's consent is necessary before any perpetual obligations or foundations are accepted, and if existing obligations be considered too burdensome the matter must be submitted to him for reference to the Holy See.

176. The parochial system is to be introduced into England by degrees.

177. As a means to this end the S.C.P.F. by a decree, 21 April, 1852, allowed the establishment of certain churches as quasi-parishes, and ordered that they should be selected by the bishop with the advice of the chapter or of the diocesan consultors.

178. The bishop is to depute the rural dean or some other person to give a new rector an inventory of all property belonging to the mission. His express authority is necessary before any legal document concerning church property be drawn up.

I. West.  
xxv. 4;  
III. Balti-  
more,  
n. 20  
*Ibid.* 5.  
IV. West.  
x. 11

I. West.  
xiii.

Cf. I. West.  
xiii. 1 and  
III. Balt.  
n. 33

II. West.  
viii. 12

*Ibid.* n. 19

§ 2. *Clergy*

179. The appointment of priests, missionary rectors included, is in the hands of the bishop absolutely except in cases of patronage (*q.v.*). In the United States the advice of the diocesan consultors is required in appointing the *first* irremovable rector, and in subsequent appointments the *concurus* (*q.v.*) is to be held. I. West. xxv. 12  
III. Balt. n. 87

180. The bishop, or his delegate, must receive the profession of faith made by rectors on appointment. I. West. xxv. 1

181. He cannot remove a missionary rector without consent or, in case of canonical fault, without the procedure of the Commission of Investigation (*q.v.*). I. West. xiii. 24

182. He cannot remove a rector (*q.v.*) appointed *ad nutum* without a sufficient and reasonable cause. An aggrieved cleric cannot appeal (*q.v.*), but he can have a *recursus* (*q.v.*) to the Holy See. Santi, vol. i. p. 225; Smith, I. p. 198

183. Before sentence of deprivation is pronounced against any priest, the Fourth Council of Westminster says that :

‘The accused should be admonished, and should he not improve, the same process should be followed in his case as the Sacred Congregation of Propaganda, by its decree of August 4, 1853, forwarded to the bishops of England, prescribed previous to the final rejection of a missionary rector.’ xii. 8

184. The bishop is charged with the duty of providing spiritual exercises for his clergy at least every two years. I. West. xxiv. 7

185. He must also arrange certain fixed times for the holding of conferences on theological and liturgical subjects. The method and subjects of these conferences are to be arranged by him, and he receives the conclusions for examination and correction. He will determine, according to circumstances, whether there will be under his own superintendence only one conference of the clergy of the whole diocese or under the presidency of the rural deans a number of conferences in their respective deaneries. *Ibid.* 8

186. The bishop’s leave is required before a priest of his diocese can undertake the office of guardian or executor. *Ibid.* 9

187. The written leave of the bishop is required before the school-mistress can live in the presbytery. IV. West. xi. 3

188. His leave is also required before a priest can reside in a rented or in a private house. *Ibid.* 4; *De vita*

189. His written leave is necessary for those who have cure of souls and wish to be absent for more than a few days ; and especially if the absence extends over a Sunday or holiday of obligation. *Ibid.* xxv. 14  
II. West. xvii.

§ 3. *The Chapter*

- I. West.,  
Cap. Stat.  
17      **190.** Whenever the bishop celebrates he has in England the right to choose his assistants without any regard to the order of precedence.
- Ibid.* 23      **191.** He must appoint one of the canons to watch over the proper performance of Mass and of the Divine Office.
- Ibid.* 42      **192.** 'The right of the temporal and spiritual administration of the cathedral church shall belong exclusively to the bishop, unless some other arrangement has been made by the authority of the Holy See.'
- IV. West.  
viii. 1      **193.** The bishop's leave is necessary for absence from choir or chapter.
- I. West.  
xi. 7      **194.** He nominates, *salvis iuribus pontificis*, to vacant stalls alternately with the chapter, who in their turn present three fitting and commendable names. Otherwise the election will devolve upon the free will of the bishop.
- Ibid.* 6      **195.** He must constitute the offices of Canon Penitentiary and Canon Theologian, and these must be elected in the way set down in the sacred canons.
- Ibid.*  
Capit.  
Stat. n. 28      **196.** The bishop appoints the church in which, during Advent, Lent, and at other times, the Canon Penitentiary shall be obliged to hear confessions.
- Ibid.* n. 27      **197.** He also appoints the subjects, the place, day and hour for the Lectures of the Canon Theologian.
- Ibid.* n. 29      **198.** He arranges for the *concursus* for vacancies in these two offices.
- Ibid.* n. 34      **199.** The bishop can examine the book containing the record of the attendance of canons.
- Ibid.* 35      **200.** He can summon extraordinary meetings of the chapter, and his consent is necessary for holding an extraordinary meeting if summoned by the provost in due course. He can also direct that the meeting shall be held in his own house.
- Ibid.* 50      **201.** The bishop can require copies of the resolutions passed in chapter, and he can exact these by censures and other penalties. The S.C.C., September 19, 1710, ordered that the chapter books should be shown to the bishop 'when there is a reasonable cause.'
- 202.** The bishop is obliged to obtain the *consent* of his chapter, after due deliberation and by voting, in the cases which are by law considered to be *gravissima*, e.g. :
- (1) In alienations (*q.v.*).

(2) In erecting new parishes within the boundaries of another parish.

(3) In erecting new canonries and new dignities, or in lessening the number.

(4) In uniting, suppressing, or dividing benefices.

(5) In demanding a charitable subsidy.

(6) In appointing pro-synodal examiners (*q.v.*).

(7) In degradations, perpetual suspensions, and interdict.

(8) In contracting any notable obligations which affect the diocese.

N.B.—Santi remarks that the above are *de iure communi*; but attention has to be given to local custom. Lib. iii.  
p. 136

203. The bishop is obliged to obtain *the advice* of his chapter in the following cases, for, as Santi says, it is provided that by right the chapter should help the bishop in the ruling of the diocese efficaciously and in deed :

*Op. cit.* iii.  
p. 135

(1) When the matter is difficult and belongs to the administration of the church.

(2) In convoking the diocesan synod.

(3) In drawing up synodal statutes.

(4) In making new missions.

(5) In appointing missionary rectories.

(6) In the Tridentine Commissions for the seminary (*q.v.*).

204. In a word, the bishop is not bound to obtain the *consent* of his chapter in matters which are ordinary and belong to the daily administration of the diocese or are not *a iure* considered to be most grave.

205. He also is not bound to obtain this consent or even their advice in matters which are of delegated jurisdiction.

#### § 4. *The Diocesan Consultors*

206. The Third Council of Baltimore decrees that the *advice* of the consultors be asked for in the following cases :

(1) For convoking and promulgating the diocesan synod.

(2) In dividing missions or parishes.

(3) In giving over a mission to a religious community.

(4) In appointing the Tridentine Commissions for the seminary.

(5) In appointing a new diocesan consultor.

(6) In appointing those who take the place of pro-synodal examiners.

(7) In alienations exceeding \$5,000 (£1,000).

(8) In imposing new taxes.

- (9) In establishing irremovable rectories.
- (10) In appointing the first irremovable rector.
- (11) In fixing the amount of pension.
- (12) In determining, out of synod, the salary of rectors and such cognate matters.
- (13) In settling out of synod the laws concerning stole dues.

### § 5. *Sacraments*

- I. West.  
xvi. 4      **207.** The bishop's leave is necessary for baptism elsewhere than in the church.
- Ibid.*  
xviii. 4      **208.** His leave is also necessary for Benediction of the Blessed Sacrament with the monstrance.
- Ibid.* 6      **209.** His approval is necessary for the place where the Blessed Sacrament is kept, if it be not reserved in the church.
- Ibid.* 18      **210.** His written permission is required for duplication.
- Ibid.*  
xix. 1      **211.** He must also be consulted in cases where there are no proper confessionals.
- Ibid.*  
xxiv. 2      **212.** He absolves from the suspension incurred, in England, *ipso*  
IV. West.  
xi. 9      *facto* by those in holy orders who are present at stage plays in public theatres or in places temporarily made use of as public theatres.
- Ibid.*  
xxi. 1      **213.** Bishops should hold ordinations, as far as possible, at the time prescribed by the canon, either in their cathedral churches, or in the churches or chapels of their seminaries. These ordinations should be held with the greatest solemnity and with all the rites of the Roman Pontifical.
- I. West.  
xxii. 9      **214.** Bishops must never grant matrimonial dispensations by word of mouth or in an ordinary letter, but by a formal document accurately drawn up.
- IV. West.  
xv.      **215.** Matrimonial causes—that is, questions as to the validity of marriages—depend solely upon the ordinary *in foro externo*.
- 216.** When a judicial investigation takes place concerning the validity or the nullity of a marriage, it must be managed in the way prescribed by law. The bishop must appoint a *Defender of Matrimony* at each of the diocesan synods. He has, however, the right to change him if necessary.
- VIII. 16      **217.** The Second Westminster leaves to the prudence of the bishop to determine in synod what seems best adapted to the customs and state of places concerning baptismal and marriage fees.

§ 6. *Various*

218. The bishop's approbation is necessary for those collecting in his diocese for any religious object. In the case of his own subjects his *written* leave, stating the object of the pious quest, is also needed. II. West.  
viii. 21

219. His own subjects, besides the written authorisation, are bound to give to the bishop an exact account of all sums collected, of persons and places contributing, and of the time spent therein. Ibid.

220. The bishop can receive offerings from the faithful on occasion of the pastoral visitation, provided that such offerings be not too burdensome to the faithful or to the mission. S.C.P.F.  
30 Nov.  
1882

221. Neighbouring bishops should, by common consent, determine the boundaries of extra-diocesan cure of souls, *i.e.* where the faithful are so near to a church of another diocese that they repair to it for divine service, and to receive the sacraments, and also give their alms to it. With the consent of their ordinary they are to be considered as attached to that mission, and he will grant the necessary faculties to the priest of that mission. III. West.  
xvi.

222. Bishops, either personally or by means of examiners specially appointed for this purpose, must use every care and precaution in their selection of candidates for the priesthood. And they should use every means in their power, and encourage others, to make and increase provision in the way of burses for the education of ecclesiastical students. I. West.  
ix. 6

223. Bishops should leave nothing undone, each in his own diocese, to establish diocesan seminaries, in which clerics may be taught theology and philosophy without being mixed up with lay students. III. West.  
ii. 1

## BREVE

1. A breve is an Apostolic letter (*q.v.*) concerning matters of less importance than those transacted by bulls (*q.v.*). Bishops and other dignitaries are usually appointed by breve.

2. These letters, which come from the Secretariate of Breves, are written in ordinary Latin characters on a white thin parchment, oblong in form.

3. They generally begin with the address of the person to whom they are sent, and proceed according to a set formula. Thus : *Dilecto nobis filio N. N. diocesis N. N. Pius PP. X. Salutem et Apostolicam Benedictionem.* The address is repeated on the obverse.



4. If not addressed to any particular person, they begin : *Pius PP. X.* ; and there sometimes is added the formula *Ad perpetuam rei memoriam*.

5. The ending is as follows : *Datum apud S. Petrum sub annulo Piscatoris die [xxiii] mensis [Januarii] an. [MDCCCIV] Pontificatus nostri anno [primo]*. Sometimes the feast of the day is added, in a clause after the month : *e.g. festo S. Raimundi de Peñafort*.

6. They are sealed with a red impressed seal and carry the signature of the Cardinal Secretary of Breves.

## BULL

1. A Bull is an Apostolic letter emanating from the Cancellaria, by which the Pope promulgates a law, accords a grace, or collates a benefice. The name is derived from the *bullæ* or leaden seal which hangs from the bottom of the bull.

2. Formerly bulls were written, without punctuation, in what is called the Lombard character. But in order to simplify matters and to reduce the expense of engrossment, Leo XIII. of glorious memory, by a *motu proprio* dated 29 December 1878, reformed the whole system.

3. The points now to be considered are : the form, the style, the thread, the seal, the signature.

(1) A bull is always written on parchment—thick, coarse, and of a yellowish tinge. The size of the sheet is 0<sup>m</sup>.70 by 0<sup>m</sup>.50. The writing is on one side only. The bottom of the sheet is generally folded.

(2) The style is peculiar to this form of Pontifical document. *Pius Episcopus Servus Servorum Dei*. The phrase *Ad futuram* or *ad perpetuam rei memoriam* is added after the word '*Dei*' when the matter of the bull is something established permanently. If the bull be addressed to an individual the name is inserted in the usual style after the word '*Dei*,' and it is followed by the phrase *Salutem et Apostolicam Benedictionem*. The conclusion is thus formulated, *e.g.* : *Datum Romæ apud Sanctum Petrum anno Incarnationis Dominicæ millesimo nongentesimo quarto tertio Idus Februarii Pontificatus nostri anno primo*. The style is full of abbreviations (*q.v.*). Bulls being dated from the Incarnation it should be noted that the year of the Incarnation begins on the 25 March.

(3) A bull *de gratia* has a silken cord (white for the greater benefices, red and yellow for absolutions and reserved benefices) run through the bottom of the document and from this cord depends the *bullæ*. The cord is of silk and hemp for provisions of the lesser benefices; and a bull *de iustitia* and executory, such as a matrimonial dispensation, has the cord of hemp.

(4) The leaden seal has on one side the heads of SS. Peter and Paul, and on the other a cross in glory with the name of the Pope, *e.g.* Pius Papa X. But since the new legislation of 1878 only bulls of collation, erection or dismemberment of the greater benefices, and bulls of solemn and important nature, are issued with the leaden seal. All other bulls now bear, impressed in the parchment, a red seal which bears the heads of the two Apostles surrounded by the name of the reigning pontiff.

(5) Bulls as a rule are signed by the Vice-Chancellor together with the initials L.C. (*lectum correctum*); the prelates of his *curia* also sign it. Only consistorial bulls are signed by the Pope and by all the cardinals present. When the Pope signs personally he writes, *Ego Pius Catholice Ecclesie Episcopus*, and following his name comes the *rota*, a device consisting of a cross within the arms of which, in the upper half, are the names, either in full or in initials, of the two Apostles, and in the lower part the name of the Pope, the whole being surrounded by a double circle containing a device peculiar to each Pope. The Pope's name is followed by those of the cardinals prefixed by the usual cross and the word *Ego*.

4. Bulls require formal promulgation (*q.v.*).

## CANON LAW

1. Canon law is so named because it is made up of rules or canons which the Church proposes and establishes in order to direct the faithful to eternal happiness.

2. Canon law is also called *ecclesiastical law*, for it is concerned with ecclesiastical persons and things, and is set forth by ecclesiastical authority; it is also called *Pontifical law* because the greater part emanates from the Popes, and the rest requires their consent before it has the force of law.

3. According to its various aspects there are several definitions:

(1) As regards the matter, or *quoad rem*. *a.* In a *strict* sense: 'A collection of laws which direct the faithful towards the true end of the Church and are confirmed by the Pope.' *b.* In a *wide*

sense : ' A collection of laws for the good of the faithful confirmed by some one possessing legislative power.'

(2) As ecclesiastical jurisprudence, or *quoad scientiam*. *a*. In a *strict* sense : ' The science of ecclesiastical laws confirmed by the Pope.' *b*. In a *wide* sense : ' The science of all ecclesiastical laws.'

4. Ecclesiastical jurisprudence, as will be seen by comparing the definitions, differs :

(1) From theology, which is ' the science which, from the principles of faith, discusses about God and about things in so far as they pertain in some way to God.'

(2) From natural law, which is ' an ordered knowledge of the rules which are founded in the very nature of things.'

(3) From civil jurisprudence, which is ' the knowledge of civil laws confirmed by civil authority and ordained for the temporal welfare of citizens.'

5. Canon law is divided :

(1) *By reason of its author*, into (*a*) divine law : that is, constituted by God ; (*b*) into human : that is, enacted by man.

(2) *By the manner of promulgation*, into (*a*) written law ; (*b*) unwritten law.

(3) *By its binding force*, into (*a*) common law, which *per se* binds all the faithful ; (*b*) particular law, which binds only some of the faithful and cannot be in direct opposition to the common law.

(4) Other divisions are into (*a*) *public* law, which is concerned with the constitution and ruling of ecclesiastical society and of the mutual relations in the Church of persons, rights, and offices ; and (*b*) *private* law which concerns the obligations of individuals as apart from the government of the Church.

(5) And, finally, canon law is divided into (*a*) the old law, which was enacted before the Council of Trent ; (*b*) the new law, decreed by that Council ; and (*c*) the newest law, which has been published since the confirmation of the Council in 1564.

6. Of the obligation and importance of a knowledge of the canon law it is not necessary to speak. The more common opinion is that, for practical purposes, a knowledge of the canon law is more necessary for a bishop than theology. If the study of law, says a canonist, is of iron, its usefulness is as of gold. Pignatelli refuses to call a man a theologian who ignores canon law, which can be called practical theology.

7. The Church, according to the words of the prophet Osee, ' Because thou hast repulsed knowledge, therefore will I repel thee

Cf.  
*Consult.*  
14, n. 11  
iv. 6

from the office of my priesthood,' requires in bishops especially, as well as in others charged with ruling, the requisite knowledge. For certain offices a degree in law is required. Thus the archdeacon ought to be doctor in theology or licentiate in canon law. The canons, theologian and penitentiary, should be doctors or licentiates either in law or theology. Vicars general, also, should have degrees in either faculty. As to vicars capitular, they should be either doctors or licentiates in canon law, and if there be in the chapter only one so qualified he should be elected; if otherwise, this official can be elected outside the body. By this the importance attached to a knowledge of the law can be seen; for it is made either one of the conditions or *the* condition for holding office. It is also particularly necessary if a bishop does not himself know the law that he should have for his vicar general one who can supply his ignorance.

8. The Councils of Westminster say :

(1) 'Since now that the ecclesiastical hierarchy has been happily restored to England, the administration of the dioceses must be carried on in accordance with law; and since important questions arise for discussion both in provincial and in diocesan synods, the solution of which depends upon the canon law, and is assigned to the study and counsel of priests; the necessity of setting to work at the study of canon law increases every day. All should go through the Institutions at least of canon law, either in Devoti or some other approved author, and thus ground themselves upon sound principles.'

III. Conc.  
xiv. P. II.  
6

(2) The Fourth Council, in its decrees on seminaries :

'The students should likewise be taught the principles of common and canon law, the decrees and instructions of the Provincial Councils of Westminster etc.'

ix. 13

## CANON PENITENTIARY

1. The Council of Trent ordered that, in all cathedral churches where it can conveniently be done, there should be appointed by the bishop a penitentiary with a prebend affixed.

Sess. xxiv.  
cap. 8, d.r.

2. According to the same Council the canon penitentiary should be :

(1) A doctor or licentiate in theology or in canon law.

(2) Forty years of age, at least begun, or otherwise if one should be found fit for the place.

3. The selection *de iure communi* belongs to the bishop; the collation to those to whom it otherwise belongs. By the *ius*

*particulare* the *concursum* is required in Italy and the adjacent isles, in Spain, in England, and in Scotland.

4. The canon penitentiary has no precedence over the other members of the chapter; for his post is only an office, not a dignity.

5. The canon penitentiary from the fact of his institution has the faculty of hearing confessions; he has, also, jurisdiction of absolving from sins without any further licence of the ordinary. He is, as it were, the *parochus* of the whole diocese.

6. He cannot, however, absolve from sins reserved to the Pope; nor can he, without a special concession, absolve from those reserved to the bishop. Officially he has no larger faculties than other confessors. But he cannot refuse the delegated jurisdiction if it be offered; nor can he sub-delegate it, unless this, too, has been specially granted to him.

7. It belongs to the bishop to determine the place, the seat, the days and hours when confessions are to be heard by the penitentiary.

Ferraris,  
*Canonius*,  
art ix.  
n. 76

8. At the stated day and hour he should be in the cathedral to hear confessions, and, even if not called for, he should be in his confessional for the more solemn times, viz. during Lent, Advent, Emberdays, and the feasts of the Resurrection, Ascension, Whitsuntide, Corpus Christi, Assumption, All Saints, and Christmas.

De Herdt,  
*Praxis*  
*Capitularis*,  
p. 28

9. Moreover, he is bound to hear confessions not only in the church but also in the houses of penitents who, by illness or other impediment, cannot go to the church. But he cannot be obliged to remain in his confessional if there be no penitents.

10. The canon penitentiary is not bound to any greater residence than the other canons, so he can be absent for three months except at the times above specified.

Garlinelli, 2464

11. In order that he should fulfil his office properly and freely he cannot exercise parochial cure or any similar office. He should not be obliged to act as deacon or subdeacon. And, regularly speaking, he should not be deputed to hear confessions of nuns if that interfere with his office. As a rule he should not be vicar

De Herdt,  
p. 79

general, lest there be suspicion that he might use in administering justice the knowledge received in the sacrament.

12. While he is hearing confessions in the church, or waiting for penitents at the usual hours, he is to be counted as attending choir, and enjoys not only the fruit of his prebend but also the distributions excepting those anniversaries which the founder expressly reserves only to those who are present in act.

13. If the penitentiary refuse to hear confessions and neglect his duty he can be punished by the bishop; and, in the case of

non-residence, he can be proceeded against with a view to his deprivation.

14. If the office fall vacant *sede vacante* the election and collation belong to the Pope. Craisson, 1205

15. The particular law for England is contained in the following decrees :

(1) 'Canons penitentiary will likewise have to be appointed, and may this first time be chosen without *concursum* by the bishops ; but in future, according to the methods of the sacred canons. The penitentiary should live, as far as it can be, at the cathedral church.' S.C.P.F.  
21 April,  
1852

(2) 'In each chapter . . . a canon penitentiary must be appointed. (He) after the first appointment . . . must be elected according to the methods of the sacred canons. The canon penitentiary should dwell, as far as it can be, at the cathedral church.' I. West,  
xi. 6.

(3) 'There shall likewise be a canon penitentiary, who shall be obliged to hear confessions in the church appointed by the bishop in Advent, Lent, and at any other times of the year which the bishop may prescribe to him.' Capitular  
Statutes,  
28

(4) 'When a vacancy occurs in the post of . . . canon penitentiary, there shall be a *concursum* among those who have obtained their own bishop's permission to concur and have been accepted by the bishop of the place, in order that the Holy See or the bishop may select the most fitting from those approved. Others who are already canons can stand if they have been duly admitted.' Ibid. 29

(5) 'The interpretation of statutes must be based upon the principles of common law.' Ibid. 51

### CANON THEOLOGIAN

1. The Fourth Council of Lateran decreed that a theologian should be elected in every metropolitan church to interpret Holy Writ and to teach what concerns eternal salvation. The Council of Trent decreed that in all cathedrals a prebend should be set aside perpetually for the exposition and interpretation of Scriptures, and that no one should be admitted to the office unless he were examined and approved of by the bishop concerning his life, morals, and knowledge. Cf. Sess.  
v. cap. 1,  
d. r.

2. The election of a canon theologian belongs *de iure communi* to the bishop except in the months reserved to the Pope ; but by the *ius particulare* there are modifications which must be observed.

3. The qualities required in a canon theologian are :

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(1) He should be capable of explaining the Scriptures; otherwise the collation is null.

*Cf. S.C.C.*  
Feb. 3,  
1646

(2) The doctorate is not absolutely necessary if there be no doctor of equal fitness available for the office.

(3) Though by the *ius commune* a *concursum* is not necessary, yet the *ius particulare* requires it in Italy and the adjacent isles, in Spain, in England, and in Scotland.

4. The canon theologian has no precedence over the other members of the chapter; for the post is only an office, not a dignity.

5. The duties of the canon theologian are:

*Cf. Benedict XV.*  
*De*  
*Synodo,*  
lib. xiii.  
cap. 9,  
n. 17

(1) According to the Council of Trent, to give public lectures upon the Scriptures.

(2) To lecture upon dogmatic theology.

(3) Also upon moral cases.

(4) And upon canon law if necessary.

S.C.C.  
15 March,  
1710  
*Ibid.*  
15 July,  
1645

6. It belongs to the bishop to determine the time, the subject, and the manner of the theological lectures; but he should regulate everything in accordance with the reasonable custom of the church and of circumstances. If the bishop make no arrangements, the theologian is not thereby released from his duty of lecturing, but he is either to apply to the bishop or to conform his lectures to the common law until the bishop decides.

De Herdt,  
*Praxis*  
*Capitularis*, p. 67

7. As regards the number of lectures necessary, although the *ius commune* says nothing about this point, the *ius particulare* promulgated by Benedict XIII. in *Constit. Pastoralis officii* agrees with the S.C.C., which says (10 June, 1876) that lawful custom and the will of the bishop have to settle the number, provided that it be not less than forty in each year. This number, then, is to be held as a general rule.

*Acta S.*  
*Sedis,*  
vol. x.  
p. 231

8. The place for the lectures is the cathedral church; though for a just reason the bishop can allow that they should be given elsewhere, *e.g.* in the palace, provided that they be in a public place, where not only clerics but all the faithful can be present.

9. The time for the lectures is not during Mass; and in no case can a sermon fulfil the obligation. The canon theologian has to teach as a doctor, not preach as a preacher. He is not obliged to reply to questions or to solve difficulties.

10. The canon theologian has a right to the ordinary vacation enjoyed by doctors in universities, *i.e.* from the feast of St. Thomas the Apostle to the day after the Epiphany; from Septuagesima to the First Sunday in Lent; from Palm Sunday to Low Sunday; from the Feast of St. John Baptist to

S.C.C.  
24 Jan.  
1629, and  
2 June,  
1860

November 5. But in this the laudable custom of each church has to be followed.

11. Only on the days of his lectures is he dispensed from attendance at choir; and on these days he shares in the distributions (*q.v.*), excepting those which by the terms of the foundation require presence *in actu*. But it must be remembered that this applies only to the lectures held in the cathedral, not to those given in the seminary. On other days if he be absent from choir *causa studii* he does not lose the fruits of his prebend, but only his share of the distribution.

Bouix, *De Capitulis*, p. 120

12. For a lawful cause the theologian may, with the bishop's approval, employ a substitute. But if he be only impeded for a short time he is not to be forced to have a substitute. In case of old age he is bound to employ a substitute, as the public utility requires that the faithful should not be deprived of the lectures.

13. If the canon theologian do not perform his office the bishop ought to proceed against him by monition or by sequestration (*q.v.*); and, in the graver case of contumacy, by deputing another, at a third part of the prebend, to give the lectures; and, if necessary, the bishop can proceed by censure and, at last, by privation.

Cf. De Herdt, p. 73

14. All canons and priests of the cathedral have to be present at the lectures; others are to be exhorted, not compelled, to attend. The bishop can compel the chapter and cathedral clergy under penalty of fine, to attend the lectures.

S.C.O. 17 Dec. 1887

15. The particular law for England is contained in the following decrees:

(1) 'Canons theologian . . . will likewise have to be appointed, and may this first time be chosen by the bishops without *concursus*; but in the future according to the methods of the sacred canons . . . and at the next synod arrangements should be made for the canon theologian's lectures, according to the methods of the canonical arrangements, due regard being paid, however, to the circumstances of time and place.'

S.C.P.F. 21 April, 1852

(2) 'In each chapter also a canon theologian . . . must be appointed. He . . . must be elected according to the method of the sacred canons. . . . The canon theologian should discharge his duty in the manner of the sacred canons at the time and place appointed by the bishop. The bishop shall likewise decide upon the subject.'

I. West. xi. 6

Capitular Statutes, 27

(3) 'In the chapter there shall be a canon theologian, who must

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give lectures upon the subject appointed by the bishop at the place, day, and hour prescribed by him.'

(4) 'When a vacancy occurs in the post of canon theologian . . . there shall be a *concursus* amongst those who have obtained their own bishop's leave to concur and have been accepted by the bishop of the place, in order that the Holy See or the bishop may select the most fitting from those approved. Others who are already canons can stand if they have been duly admitted.'

*Ibid.* 29

*Ibid.* 52

(5) 'The interpretation of statutes must be based upon the principles of common law.'

### CANONISATION

1. Canonisation is the process by which the Pope, as head of the Church, places a Blessed Servant of God on the list of the Saints, and extends to the whole Church a *cultus* which has hitherto been special and particular.

2. Alexander III. reserved to the Holy See the canonisation of saints. The process is long and careful. The inquiry both into virtues and miracles is searching; and Gregory IX. in his bull *Cum dicat* lays down the rule that both are required.

3. When the demand is made for a canonisation, the Pope institutes a commission of the S.C.R. for the cause; and then, at the cost of those who postulate, begins a very complicated process, which is described by Benedict XIV. in his classical work on the subject. One single proved fault, no matter how slight, may render the cause hopeless.

4. After the cause has been duly inquired into, and all objections have been satisfactorily answered, the matter is brought before three consistories; and when final judgment is given the ceremony of canonisation takes place in St. Peter's before a Mass celebrated by the Pope.

5. As the process of canonisation is confined to Rome, it is not necessary here to dwell further on a most interesting subject.

### CANONS

1. The sacred Canons have to be obeyed by all, especially by the bishops, who at their consecration bind themselves by oath to observe these sacred laws of which they are the official guardians.

2. They are to be found in the Canon Law, which contains the legislation of the Church, both common and particular.

3. For Canons in the sense of a Chapter see under this word.

## CARDINALS

1. Cardinals are the immediate counsellors or advisers of the Pope, and form, so to speak, the Senate of the Church. Their relation to the Sovereign Pontiff is analogous to that of the chapter to the bishop.

2. Besides helping the Pope in the government of the universal Church, they have also the right of electing his successor.

3. The Council of Trent requires the same qualities in them as are needed in bishops. Cf. Sess. xxiv. cap. c. d. 7.

4. The Council also desires that, as far as can be conveniently done, they should be elected from all parts of the world.

5. The Sacred College is not necessarily confined to any special number.<sup>1</sup> Sixtus V. fixed the number at seventy; but the Pope can lessen or increase it.

6. The Sacred College is divided into three orders: viz. bishops, priests, and deacons. The bishops are those who hold the six suburban sees of Ostia, Porto, Albano, Frascati, Palestrina, and Sabina. The cardinal priests, who at present may be fifty in number, have all received episcopal consecration. The cardinal deacons, who are fourteen all told, are either priests or in orders.

7. There are two divisions of cardinals:

(1) Those living in Rome and charged with the actual administration of the Church. These are called cardinals *in Curia*, and are bound by the law of residence.

(2) Those, almost all of them cardinal priests, who by Apostolic dispensation are resident in the dioceses of which they are, generally, the ordinaries. When these are in Rome they cannot leave the city without permission.

8. To each of the cardinal priests is assigned a title or church in Rome in which he has jurisdiction in all things which pertain to the service of that church; but he has not episcopal jurisdiction therein. To the cardinal deacons is assigned a deaconry, with the same prerogatives.

9. Cardinals take precedence of all other ecclesiastics under the Pope, for precedence is reckoned not by order, but by jurisdiction. Hence a cardinal deacon, who may be only in deacon's orders, takes precedence of a patriarch, primate, or metropolitan.

10. Among their privileges are the following:

<sup>1</sup> Thus in 1331 there were only twenty cardinals. Leo X. at one time made thirty-one. Pius IV. had seventy-seven.

(1) A cardinal can choose for himself and for his *familia* confessors even if not approved of by the ordinary.

(2) His causes can only be judged by the Pope.

(3) The testimony of a cardinal, when he says that something was done or said in the presence of the Pope, or commanded by him, is to be believed on his word.

(4) There is no appeal from a sentence of a congregation of cardinals.

(5) They can give the tonsure and minor orders in their titles to subjects and familiars.

(6) They are the principal members of the Roman Congregations (*q.v.*).

### CATHEDRAL

1. The cathedral church is the seat of the bishop's jurisdiction.

2. The ruling and administration belong by common law *cumulative* to the bishop and to the chapter; and both can pass statutes concerning the cathedral church.

3. But neither can decree anything without the consent of the other, or change what has been once established by mutual agreement.

4. The consent of either is not to be withheld unreasonably.

5. If the bishop has by delegated powers the right to determine the form of church worship and also the time-table, this does not exclude the chapter's power of passing statutes concerning the same subjects. Hence it is to be concluded, according to decisions of the *Rota*, that mutual consent is necessary.

6. The nomination of vicars and of *beneficiati* belongs to those to whom the benefices belong. Thus the chapter has the right of nominating to any of these benefices in the cathedral church if they have the rights of presentation (*q.v.*).

7. If the cure of souls be attached to the cathedral, the chapter has the right of nominating the vicar; but the bishop can insist upon the vicar being moveable or permanent. But, generally speaking, it is advisable that the cure of souls should be exercised by a permanent vicar.

8. But, the First Provincial Council of Westminster says:

'The right of the temporal and spiritual administrations of the cathedral church shall belong wholly to the bishop, unless it shall have been otherwise provided by the authority of the Holy See. The chapter, however, has power to carry on the Divine Office there. Following the Council of Trent, the chapter shall depute

*Cf. Trent,*  
Sess. vii.  
cap. 7, *d.r.*

Capitular  
Statutes,  
24, 25

one of its body as administrator when the see be vacant, to hold the cure of the cathedral church.'

### CATHEDRATICUM

1. The *Cathedraticum* is an annual exaction which the bishop can demand each year from every church in his diocese excepting the monasteries. It is called *cathedraticum* because it is given in honour of the episcopal chair, and in sign of subjection to the cathedral church over which the bishop presides. It is sometimes called the *synodaticum*, because it is paid usually in synod.

2. The amount of this exaction is always to be estimated according to the reasonable custom of the country.

3. The *cathedraticum* is one of the episcopal rights, and is therefore privileged.

4. It was not taken away by the Council of Trent. It is not to be paid at visitation (*q.v.*), and therefore differs from procurations (*q.v.*); but it is to be paid in synod if held.

5. All secular churches are bound to pay the *cathedraticum*; this in law refers only to benefices; unbeneficed clergy are exempt.

6. Regulars who serve parish churches have to pay this tax to the diocesan bishop.

7. There is no time fixed for paying this tax; and the S.C.C. on May 21, 1735, and again on November 19 of the same year, orders that it must be paid even in those years in which there is no synod.

8. The Third Provincial Council of Westminster, at the will of the S.C.P.F., decreed 'that in future the amount to be paid for *cathedraticum* shall be the same in all the dioceses, and shall be fixed at one-half the pound sterling;' and 'we decree that the under-named ecclesiastics are bound to pay it: (1) all chapters from their common stock; (2) priests ordained on the title of the mission who are in the receipt of stipends from any church or oratory; (3) those who have the cure of souls; (4) those who preside over churches or public oratories unless they are able to prove a special exemption.'

Decree  
xvii.

9. Where bishops are supported by salaries from the Government or from other sources, the *cathedraticum* has gone out of use; but it obtains in England and in the United States; in which last country, the learned American canonist, Dr. Smith, says, 'It is in fact the main support of bishops, as well as the chief means to defray the expenses incident to the discharge of the various

I. p. 361  
II. Balt.  
Plen.  
n. 100

episcopal duties. It is made up from the income of each church, not out of the salary of pastors or assistants. The amount should be determined by the bishop with the advice of his clergy.'

*Act. Eccl.  
Mediol.*  
P. ii.  
p. 346  
II. Plen-  
ary Coun-  
cil of  
Baltimore,  
n. 100

10. It is clear from this that the principle of the *cathedraticum* is an acknowledgment from the churches, not from the priests. St. Charles is clear that it has to be paid by the parish churches. The Fathers of Baltimore say: 'It is but equitable and fair that all the faithful of each diocese should contribute to the support of the bishop, who is charged with the care of all,' &c.

### CAUSE

1. Cause in general is a term signifying a process, an instance, a contestation; but, properly speaking, a cause is the matter of a process when submitted to judgment.

2. Causes in ecclesiastical law are divided into:

- (1) Spiritual causes.
- (2) Temporal causes.
- (3) Mixed causes.

3. *Spiritual causes* are those whose object is a spiritual thing or annexed to something spiritual. These causes belong exclusively and *proprio iure* to the ecclesiastical court. Canonists lay down four principles by which we can determine whether a cause belongs to the spiritual or to the temporal courts. They are:

(1) A cause certainly belongs to the ecclesiastical *forum* whenever the Church, either by express definition or by her practice, sufficiently declares that they are subject to her jurisdiction.

(2) For distinguishing causes proper to the ecclesiastical *forum* from those belonging to the civil *forum* the safe rule is to follow the pontifical and conciliar decrees which clearly draw this distinction and have passed into the general discipline or legislation of the Church.

(3) A cause belongs to the ecclesiastical *forum* when, in order that the Church may conveniently attain its proper end—to wit, the salvation of souls—it is necessary that it should be submitted to an ecclesiastical judge and not to a secular one.

(4) A cause belongs to the ecclesiastical *forum* when such is the common teaching of Catholic doctors.

4. Spiritual causes are:

(1) *Beneficiales*, by which are understood all controversies concerning the pecuniary benefits of clerics, such as those that concern a benefice or quasi-benefice, its ownership, its acquisition,

its retention and its restoration if it be unjustly taken away. Also under this head come contracts with the Church and questions concerning donations and the wills of pious founders, &c.

(2) *Criminales*, by which are understood those cases which concern the coercive power of the Church as regards faults and their punishment. Among criminal causes of a spiritual nature come apostasy, heresy, schism, simony, profanation of the sacraments, violation of the sacramental seal, omission of the paschal communion, serious infringement of the canon law. There are also breaches of the moral and civil law which *ratione personae* belong to the ecclesiastical forum.

(3) *Matrimoniales*, which concern matrimony, as it is a sacrament, in its three aspects, viz. :

(1) The matrimonial bond.

(2) Separation *a thoro* or *a vinculo*.

(3) Property, succession, aliment. This last will also come under the head of Mixed Causes. The Council of Trent pronounces anathema against those who say that matrimonial causes do not belong to the ecclesiastical judges.

Sess.  
xxiv.  
can. 12

5. Temporal causes, which are solely the concern of the civil power, need not detain us here and now.

6. Mixed causes are principally those in which the State has taken what was formerly under the sole control of the Church. Many cases of contracts, marriage in its civil aspect, the legitimation of bastards, as far as civil effects go, wills, education, sacrilege, perjury, blasphemy, crimes *contra bonos mores*, usury, trusts, &c. The modern State, looking upon all as citizens, provides and enforces the civil rights and duties of citizenship. While the Church is firm in respecting her own spiritual causes, in those that are mixed she seeks no conflict with the State, and if her laws be carried out in their true sense, there need not be, in most cases, any difficulty, as all law is, or should be, based on truth and justice.

7. Spiritual causes are divided into two :

(1) *The greater causes*, which are reserved to the Pope. These are : all elections, translations, resignations, deprivations of bishops or their punishment for canonical crimes. Also the matrimonial causes of kings and princes.

(2) *The lesser causes*, which concern clerics and others personally, are not, as a rule, reserved to the Pope, to whom, however, appeal or recourse can always be made by an aggrieved person. But if they touch upon the faith or morals, and so affect the whole

Church, the cause, of its very nature, is reserved to the Roman Pontiff.

8. The Council of Trent decreed :

‘ All causes belonging in any way whatever to the ecclesiastical court, even though they may relate to benefices, shall be taken cognisance of, in the first instance, only before the ordinaries of the place, and shall be completely terminated within two years at the latest from the time that the suit was instituted ; otherwise, at the expiration of that period, it shall be free for the parties, or for either of them, to have recourse to superior but otherwise competent judges, who shall take up the cause as it shall then stand, and shall take care that it be ended with all possible despatch ; nor before that period shall the causes be committed to any others [*than the ordinaries*] ; nor be transferred therefrom ; nor shall any appeal interposed by those parties be received by any superior judges whatsoever ; nor shall any commission or inhibition be issued by them except upon a definitive sentence or one that has the force thereof and the grievance arising from which cannot be redressed by an appeal from that definitive sentence. . . . Furthermore, matrimonial and criminal causes shall not be left to the judgment of deans, archdeacons, and other inferiors, even when in their course of visitation ; but they shall be reserved for the examination and jurisdiction of the bishop.’

Sess. xiv.  
cap. 20,  
d. r.

## CELEBRET

1. A *Celebret* is a letter commendatory given by a bishop to his clergy when they have leave of absence, to testify that the bearer is a priest and is free from all canonical censure. The document asks the bishops of the places where the bearer may find himself to allow him to say Mass and to help him in all his necessities.

2. The document must be sealed and signed by the diocesan authority whence it emanates ; and the seal is more important than the signature.

3. A *celebret* is only given for a specified time ; and at the expiration of that period it ceases to be a testimonial of value, especially if it has not been *visé* by the competent authority of the diocese in which the priest stays or stayed.

4. The necessity of a *celebret* is laid down by the Council of Trent in these words : ‘ No foreign (*peregrinus*) cleric is to be allowed to celebrate by any bishop without letters commendatory of his

Sess. xxii.  
c. 16, d. r.

own ordinary.' It is therefore of obligation and many dioceses have laws enforcing this decree.

5. But it is well to note the word *peregrinus* ; for the Council itself has stated in the same session (*de observandis*) that it is to a priest *vagus* and *ignotus* that permission is to be refused. Hence a priest from another diocese, who is known to the clergy of the church where he desires to say Mass, or is vouched for by persons whose testimony is beyond cavil, can celebrate even if he have no *celebret*, and *secluso scandalo* can say Mass either in private oratories or in unfrequented chapels or in the parish church at hours when the people do not attend, since he is not irregular, nor under censures, and therefore has the right to use the power given him by the Church of offering the sacrifice. But he is bound to put himself as soon as possible in conformity with the local laws and provide himself with the leave to say Mass publicly.

6. A bishop or a rector of a church cannot prevent a stranger from celebrating Mass if he be duly provided with a *celebret* from his own bishop and if there be nothing against his priestly character. To refuse leave would be an unjust act ; for it would be inhibiting and subjecting to censure one who, so far, is not a subject of the local authority.

7. Even where diocesan laws oblige a priest to have his papers *visé* by the competent authority, it is always allowable for the clergy of the church to permit a stranger priest, whose papers are in order, to say Mass once before he presents them for signature. In Rome this is the custom before approaching the Vicariate for the Roman *celebret*.

## CELIBACY

1. Celibacy is an obligation imposed in the West by the Church upon two classes of her children :

- (1) Ecclesiastics in sacred orders.
- (2) Professed religious.

2. It is debated whether for ecclesiastics the obligation has the nature of a vow or of a law. The Council of Trent [*see below*] does not decide the question.

3. The effect of the obligation of celibacy is to make a diriment impediment for matrimony.

4. The Council of Trent says :

'If anyone says that clerics constituted in sacred orders, or religious solemnly professing chastity, can contract marriage, and



Sess.  
xxiv.  
*De Ma-*  
*trim.*  
can. 9  
Pius IX.  
Constit.  
*Apostol.*  
*Sedis*

that the contract is valid notwithstanding the ecclesiastical law or vow, let him be anathema.'

Clerics in sacred orders, as well as solemnly professed religious of either sex, presuming to contract marriage incur, as well as the persons with whom they marry, excommunication *latae sententiae* reserved to the bishop or ordinary.

## CEMETERY

1. Cemeteries are the 'sleeping-places' where the faithful repose awaiting the final resurrection. They should be duly blessed, and if necessary, reconciled.

2. The S.C.C. have declared that where public cemeteries have been erected the *ius sepeliendi* remains to the parish priest.

3. As a general rule it is not allowed to bury in the same part Catholics and heretics, schismatics or infidels, for this would be a communication *in sacris*; and those who order ecclesiastical burial to be given to heretics are excommunicated and interdicted.

4. In cases of necessity Catholics should hold themselves passive. When a heretic is to be buried in a Catholic cemetery it is never lawful to take an active part in the interment. So, when the presence of the *parochus* is required by the civil law at the burial of heretics, he must assist as only a public official and not with his ecclesiastical vestments.

5. On the other hand, if a Catholic desire to be buried in an heretical cemetery it cannot be positively and actually allowed; and if relations wish to bury him in such a cemetery, the *parochus*, after finishing the prayers, leaves the body in their hands.

6. In the case of general public cemeteries the S.C.P.F. 16 April, 1862, lay down the following:

(1) It is altogether to be desired that Catholics should have their own cemeteries, distinct from those of non-Catholics.

(2) If this cannot be obtained, at least a separate part should be set aside for the sole use of Catholics.

(3) If this also cannot be had, the grave of each Catholic should be blessed before the body is placed therein.

7. The First Westminster Council says:

'It is a truly praiseworthy practice, where there is no cemetery, to perform what is just at the house of the deceased if the corpse cannot be brought to the church, as is to be desired. But we exhort Catholics that they everywhere provide for themselves

cemeteries blessed according to the Catholic rite ; or, where public cemeteries are made at the common cost, that they see that a portion be set aside for themselves alone.' xxv. 7

See CHRISTIAN BURIAL.

### CENSORSHIP OF BOOKS

1. The censorship of books is an important part of the Church's duty of safeguarding the flock of Christ. As early as 1515 the Fifth Lateran Council ordered that no one should print or cause to be printed, under pain of excommunication, any book without its being examined with care, approved and signed by one charged with the duty, and having competent knowledge of the matters treated in the work. The Council of Trent repeats the law as to books treating of sacred things, and decrees that they should be examined and approved gratuitously. The examination belongs to the ordinary, who appoints the censor. Sess. iv.

2. Several Popes have enlarged on these rules : as Clement VIII., Benedict XIV., who added that when the book was by a Catholic author of name and merit he should be heard in defence of his book, if it is to be condemned, or that one of the consultors should be set apart as a defender.

3. Leo XIII. by his Constit. *Officiorum ac munerum* (1896) remodelled the laws of the Index, and from this we take the following.

4. The approbation of books, which are not reserved to the Holy See, belongs to the ordinary of the place in which they are published (*in quo publici iuris fiunt*). Regulars have to get the licence, not only of their own prelates, but also of the bishop, and both licences are to appear either at the beginning or end of the book.

5. An author staying in Rome, and wishing to have his book printed elsewhere, needs no other approbation except that of the Cardinal Vicar and the Master of the Sacred Palace.

6. Bishops should take care that those to whom they commit the examination should be men of piety and learning, who will not be led by likes or dislikes, but, putting aside all human affections, will look only to the glory of God and the good of souls.

7. Hence, with minds unprejudiced, they will only have before their eyes the dogmas of Holy Church, the common teaching of Catholics, and what is contained in the decrees of General Councils, the Constitutions of the Roman Pontiffs, and in the teaching of learned men.

8. After examination, if there be nothing against publication,

the ordinary shall give his licence in writing, and without charge, and this shall be printed at the beginning or end of the book.

9. The books that are bound to be submitted to ecclesiastical censure are :

- (1) Books on the Scripture.
- (2) Sacred theology.
- (3) Ecclesiastical history.
- (4) Canon law.
- (5) Natural theology.
- (6) Ethics.
- (7) And all writings treating of religious or moral subjects.

10. Secular clerics are advised, as an act of respect, not to publish even books which treat of arts and natural science without consulting their ordinaries. Also, they are forbidden without the leave of the bishop to undertake the editorship of papers or magazines.

11. No book subject to ecclesiastical censure can be published without the name of the author, publisher, place and date on the title-page. But the bishop can for just causes allow the author's name to be withheld.

12. New editions of works already approved need a new approbation ; and so do translations.

13. Those who print or cause to be printed, without the leave of the ordinary, the Bible or annotations or commentaries thereon incur *ipso facto* excommunication *nemini reservatam*.

14. Those who transgress in the other matter [this does not apply to heretical books or those condemned by name] are according to the gravity of their offence to be admonished seriously by the bishop, and, if it seem opportune, they may be coerced even by canonical penalties.

15. On this legislation we may note :

(1) That leave is to be sought for publication, not for printing. Therefore, proof sheets may be submitted for censorship.

(2) Treatises on liturgy, lives of the saints, accounts of miracles, works on the religious and moral aspects of socialism, come under the head of books treating of religious or moral subjects.

(3) The gratuity of the approbation does not, strictly speaking, exclude a fitting recompense for the labour of the censor ; but it is better that his support should come from other sources.

(4) The clause concerning secular clerics submitting their writings on arts and natural sciences is held to be a recommendation, not a strict precept ; though Pennachi holds that it is preceptive.

(5) There is no prohibition against clerics writing in papers or magazines, but the post of editing such publications requires the leave of the bishop.

(6) The censor has nothing whatever to do with the style or the views expressed in the book or the conclusions arrived at, except so far as they may clash with the dogmatic teaching of the Church, the received opinions of Catholics and doctors, and the decrees of General Councils and Popes. Hence the censor is obliged to interpret his functions strictly, and he has no right to refuse his approbation unless there be clear evidence that the book contains propositions against faith or morals. The question of opportuneness is not within his province. He must remember, says Benedict XIV., 'that there are many opinions which seem certain (*certo certiores*) to a school, institute, or nation, which, however, without any hurt to faith or to religion may be attacked and rejected by other Catholics who defend the contrary with the knowledge and permission of the Apostolic See, which leaves every opinion of this kind to its own grade of probability.'

Constit.  
*Sollicita*  
*ac provida*

(7) The laws of the Index are of universal application, and on 23 May, 1898, the S.C. Index declared that English-speaking countries come under the law. But the S.C.P.F. granted the English bishops most ample faculties, owing to 'the special circumstances of the country,' so that they may 'modify the rigour of the law by their prudence and counsel as the case demands.'

(8) Every bishop should have an official censor of books for his diocese; but he can always, when desirable, depute another for the purpose of a particular book which demands special knowledge, or for other reasons. He, also, is not bound to accept the judgment of one censor; but, should there be reason, he can refer the matter to others.

### CENSURE

1. A censure is an ecclesiastical, medicinal, and spiritual punishment by which a baptized man, gravely ill-doing and contumacious, is deprived, either wholly or partially, of the use of certain spiritual goods until he recover from his contumacy.

2. From the above the following points are clear :

(1) The principal and proximate end of a censure is the crushing of contumacy in order to recover the guilty one; the secondary and remote end is that other evil doers may be deterred.

(2) Only a Christian is subject directly to the Church's censures.

(3) The sin for which censure is inflicted must be one which

is, internally as well as externally, grave and *in genere suo* perfect and completed.

(4) There must be contumacy (*q.v.*).

3. There are several divisions of censures in general :

(1) Censures *a iure*, which are passed by a lasting edict of the lawgiver, and censures *ab homine*, which are passed by the sentence, command, or particular precept of the judge.

(2) Censures *latae sententiae*, which are incurred by the admission of the crime, and hence, a declaratory sentence (*q.v.*) is required ; and censures *ferendae sententiae*, which are only inflicted by a condemnatory sentence of the judge. In doubtful cases a censure is presumed to be *ferendae sententiae*, because in punishment the more benign interpretation is to be followed. Moreover, before censures *ferendae sententiae* be inflicted, three monitions are necessary or one peremptory, excepting in the case where not only the crime but also the contumacy is notorious and therefore sufficiently proved.

(3) Censures *reservatae* and censures *non reservatae*.

4. There are several kinds of censure in particular :

(1) Excommunication (*q.v.*).

(2) Suspension (*q.v.*).

(3) Interdict (*q.v.*).

5. As regards the subject of a censure it must be noted :

(1) Cardinals and bishops do not fall under a censure *in iure prolata* unless express mention be made of them.

(2) Pilgrims, though not *per se* subjects of the local ordinary, may be excommunicated by him if they transgress a law which has *in iure* that censure *sententiae ferendae* attached.

(3) All who by appeal are under the protection of a higher tribunal cannot be censured by an inferior judge.

(4) Kings and sovereigns cannot be censured by bishops ; nor can communities and chapters be excommunicated by them.

6. There are certain recognised excuses from censures :

(1) Ignorance (*q.v.*).

(2) Fear (*q.v.*).

(3) An appeal (*q.v.*). In regard to this it may be noted that an appeal from a censure *latae sententiae* is only *in devolutivo*, and during the appeal the sentence of the judge must be respected ; when the appeal is from a censure *ferendae sententiae*, the effect is *in suspensivo*, and the sentence need not be heeded. If the censure be *sub conditione*, and the appeal be made before the condition be fulfilled, then also the effect is *in suspensivo*.

7. In the *forum internum* confidence in one's own innocence also excuses ; but in the *forum externum*, if the crime after appeal be proved by judicial process, although in fact the judgment be faulty, the censure, for the sake of avoiding scandal, must nevertheless be observed, though *recursus* is always open to the Holy See.

8. Those who have jurisdiction in the *forum externum* can pass censures. Thus the Pope or a General Council can inflict them for the whole world ; the Roman congregations in their own spheres ; the bishop for his diocese ; the chapter or the vicar capitular *sede vacante*, regular prelates having jurisdiction in the *forum externum*, legates of the Holy See, and chapters of regulars over their own subjects. But parish priests, abbesses and secular judges have no such power.

9. The Council of Trent most wisely warns ordinaries that the sword of censures is to be used only with sobriety and with great circumspection. Sess. xxv.  
cap. 3, 4, 7.

10. Although censures are medicinal punishments and are destined to overcome contumacy they do not cease at once upon repentance ; but as the sentence was a judicial act so there is required also a judicial absolution, which is lawfully given when there is amendment.

11. Absolution (*q.v.*) can be given in two ways :

(1) In the *forum internum* : that is, from the sin and hidden censure. This can be given by any priest having the necessary jurisdiction. In the danger of death all censures cease to be reserved and any priest can absolve ; but if the sick man recover he is bound to present himself to the superior, not for receiving absolution but for showing his obedience to the law.

(2) In the *forum externum* absolution can only be given by those vested with the necessary judiciary power, i.e. by the one who passed the sentence, his delegate, or his superior, e.g. the Pope. The metropolitan, on appeal only, can absolve from the censures inflicted by his suffragan.

12. The Constit. *Apostolicae Sedis* excommunicates all who presume under any pretext to absolve without due authority those who have incurred censures reserved to the Roman Pontiff.

13. Power to absolve in the *forum internum* from censures reserved to the Pope is to be asked for from the Sacred Penitentiary (*q.v.*) ; for the *forum externum* the petition is made either to the Sacred Congregation of the Council or to that of Bishops and Regulars. But in countries under the Sacred Congregation of

L

Propaganda abundant faculties, with power of delegation, are granted to the bishops to deal with such cases.

Lombardi,  
vol. III.  
p. 60

14. Absolution given in the *forum externum* always and absolutely is of avail in the *forum internum*; but that which is given in the latter is only sometimes and *iuxta modum* of effect in the former.

15. The Holy Office has lately passed several decrees on the subject of absolution in the *forum internum*.

(1) It cannot be safely held that any bishop or approved confessor can absolve from censures specially reserved to the Pope when it is impossible for the penitent to go personally to the Holy See. Recourse by letter must be made to the proper quarter. In cases in which absolution cannot be deferred without danger of great scandal or of infamy, concerning which the confessor must charge his own conscience, absolution can be given from censures specially reserved to the Holy See, under penalty of incurring again the same censures unless within a month the one absolved recurs to the Holy See by letter and through his confessor.

Feria IV.  
23 June,  
1886; also  
30 March,  
1892

(2) The same applies also in cases where the penitent is perpetually prevented from going to Rome.

17 June,  
1891

(3) The absolution given under these circumstances is direct, not indirect.

19 Aug.  
1891

(4) The same Sacred Congregation further declared that in cases in which neither infamy nor scandal need be feared, but where it would be very hard to keep a penitent unabsolved and remaining in grave sin while faculties of absolution are being sought, a simple confessor can directly absolve from the censures reserved to the Pope under the penalty of incurring again the same censure unless, within a month, the one absolved, by letter and through the confessor, recur to the Holy See.

Feria IV.  
16 June,  
1897

(5) When neither the penitent nor the confessor can send a letter to the Holy See—and it would be hard for the penitent to go to another confessor in this case—it is lawful for the confessor to absolve even from reserved cases without imposing the obligation of sending a letter.

Feria IV.  
9 Nov.  
1898

(6) That those absolved by virtue of the decree of 1886 satisfy the obligation of having recourse to the Holy See within a month by applying to the bishop or vicar-general who has the faculties of absolving from cases reserved to the Pope, but not to a simple confessor delegated habitually to absolve from these cases.

Feria IV.  
12 Dec.  
1900

### CENSUS

1. *Census* is an extraordinary exaction in the shape of an annual tax imposed by the bishop upon some pious place, either to be paid to himself as a sign of subjection, to the patron as an acknowledgment of foundation, or to others for some just cause.

2. A *census* is only lawful under two circumstances :

(1) At the consecration of a new church, provided that the patron consents.

(2) When, with the consent of his chapter, the bishop grants a church to some pious place and loosens it from his jurisdiction.

3. Once imposed, the *census* can never be increased without the leave of the Holy See.

### CESSATION A DIVINIS

1. Cessation *a divinis* is not, properly speaking, a punishment nor a censure, since it does not regard directly persons but only places. It is a simple prohibition to clerics to abstain from celebrating the divine office or from ecclesiastical burial in a given place. It is imposed by the Church in sign of grief on account of some grievous injury done to her ; and its intention is to induce the guilty person to make satisfaction. The decree should not be published until the culprit has been summoned by fitting citation to make reparation.

2. The effects, being local and not personal, are more ample than those of an interdict ; but it is lawful to celebrate secretly in order to be able to give the Viaticum.

3. The cessation, however, may be suspended for feast days.

4. Many of the effects of a local interdict (*q.v.*) are common to a cessation.

5. As it is not a censure, he who violates it does not incur the penalties decreed against the violation of censures ; neither does he incur irregularity. But his disobedience will be dealt with by the bishop in the ordinary way.

### CHANCERY

1. The Roman Chancery is the place where are expedited all the acts of grace that the Pope grants in consistory, particularly the documents concerning archbishoprics, bishoprics, and other consistorial benefices. The Chancery represents the Pope and is,



says Corradus, the organ of his voice and will. Here, too, are expedited the bulls. Its methods of work are known as the 'Rules of the Chancery,' seventy-two in number, which were first arranged by John XXII. and were increased by subsequent Pontiffs, especially by Nicholas V. and Clement XII. They have to be republished by each Pope on his accession. Canonists say that only the Pope is the chancellor in the Church of God; and hence the one who in his stead exercises that office is called vice-chancellor (always a cardinal), who is assisted by many officials.

2. Bishops have their chanceries, in which are expedited all dispensations and faculties. The episcopal chancery is presided over by an official, rightly called the chancellor, who is the keeper of the episcopal seal, and authenticates the documents drawn up by the secretaries attached to his office.

3. Chancery fees are lawful as a moderate retribution for the labour of drawing up the papers required. The whole question of fees is treated under the title of *TAXA INNOCENTIANA*.

4. The salary attached to the chancellor's office should be a fixed one; and a sufficient part of the chancery fees may be used towards this purpose. When he has no fixed salary these fees would seem to belong entirely to him. But the alms given for dispensations &c. cannot be devoted to this purpose; they must be applied exclusively to pious uses, and cannot go even towards making up his salary.

Trent,  
Sess. xxi.  
c. 1; and  
Craisson,  
n. 1054

### CHANCERY RULES

1. The rules of the Apostolic Chancery are certain regulations about the way of disposing of benefices, of expediting provisions and of passing sentence in processes concerning benefices.

2. They are of force only during the life-time of the Pontiff, and therefore each Pope, the day after his election, confirms them or adds to or takes away from those of his predecessors.

3. These rules are universal. Hence they bind everywhere, unless derogated by concordats or by a lawfully prescribed custom to the contrary.

4. The rules of the Apostolic Chancery, generally seventy-two in number, which concern us practically are these:—II. concerning the reservation to the Pope of all cathedral and monastic churches and *sede vacante* of all vacant benefices. IV. concerning the reservation of dignities in cathedral chapters. IX. concerning the reservation of papal months and alternatives (*q.v.*). X.

concerning the invalidity of resignations made twenty days before death. XXVI. concerning vacancies caused by promotion. XXXVII. concerning not appealing before a definite sentence. XLII. concerning the rights of patronage of ecclesiastics. XLIX. concerning dispensations in degrees of consanguinity. LI. concerning dispensations in general. LXVI. concerning those who remain under censure. LXVIII. concerning reservation of benefices *Sede Apostolica vacante*.

### CHAPLAIN

1. A Chaplain is one who is appointed to a Chaplaincy (*q.v.*).

2. He is bound *per seipsum* to celebrate the Masses if it be expressed in the foundation in so many words or equivalently. For the Council of Trent orders that what is constituted and laid down in the erection of the chaplaincy is *omnino* to be observed.

Sess. xxv.  
c. 5, d. r.

3. But lest the burden should be too great, a chaplain who is bound by the foundation to celebrate Mass daily *per se ipsum* is allowed once a week to get another to celebrate for him.

S.C.C.  
10 March,  
1623

4. Moreover, canonists of weight hold that sometimes *titulo honestatis* or out of reverence, or for a just cause, a chaplain can sometimes abstain, not more than once a month, without being obliged to find a substitute.

5. The S.C.C. in 1683 declared that a chaplain on days of lawful vacation cannot celebrate Mass for any other intention than that of the founder; nor can he receive stipends for such celebrations.

6. A chaplain, bound to celebrate daily, cannot accept a new stipend and make one Mass satisfy for two obligations; unless in the foundation it be expressly said that he is not bound to apply the sacrifice to the founder's intention.

7. A chaplain who is prevented on account of health from celebrating is not obliged, for fifteen days only, to find a substitute.

S.C.C.  
17 Sept.  
1695

8. Chaplains of cathedrals, who are members of the church, should walk in procession and sit in the stalls immediately after the canons. They take precedence by date of ordination.

S.C.R.  
16 July,  
1605

9. A chaplain cannot be compelled by the bishop to celebrate at any particular hour when this is not laid down in the deed of foundation. The bishop can oblige the chaplain to provide *de proprio* the vestments.

S.C.C.  
6 April,  
1617

10. Chaplains once examined and approved by the ordinary *quoad scientiam* should not be again subjected to examination on the same.

S.C.E.R.  
17 July,  
1615

S.C.C.  
11 Jan.  
1698 &c.  
S.C.E.R.  
3 Oct.  
1692

11. The bishop or the heirs of the founder cannot add in any way to or change the founder's will.

12. Chaplains of confraternities (*q.v.*) should not be moved by the bishop *sine causa* if the members be unwilling.

13. The Provincial Council of Dublin, 1853, requires chaplains of soldiers, prisons, and other public institutions at stated times to inform the bishop of the moral and religious conditions of these institutions.

### CHAPLAIN FOR NUNS

1. A chaplain for nuns ought to be of mature age, *i.e.* about forty years of age.

2. Although nuns may have the right to nominate their chaplain, the bishop can *ex iusta causa* reject him if he be too young. On the other hand the superior can refuse to receive one whom she judges to be too young. But much has to be left to the prudence of the bishop and the necessities of the place.

S.C.E.R.  
15 June,  
1647

3. Chaplains who meddle beyond the affairs of their office are to be removed.

S.C.E.R.  
17 April,  
1604

4. Regulars cannot be chaplains of nuns except when there be a scarcity of secular priests. If regulars, under these circumstances, have to act, they must be grave in manner, of a due age, have the consent of their superiors, and attend strictly to their own business.

5. Chaplains of convents are moveable except in cases where nuns are in quasi-possession of a presentation for life.

S.C.C.  
26 Jan.  
1693

6. Chaplains of nuns that are subject to regular prelates should be approved of by the regular superior.

7. Chaplains can celebrate the Mass according to the office kept by the nuns in choir.

8. A chaplain, in case he be prevented from doing his work, cannot, without the leave of the bishop or vicar general, substitute another priest.

9. A confessor approved for nuns can lawfully administer the Holy Eucharist.

S.C.E.R.  
14 May,  
1645

10. A chaplain of an exempt convent cannot be removed by the bishop without cause; and, generally speaking, no chaplain, though removeable, should be removed without cause.

### CHAPLAINCY

1. A Chaplaincy is a certain sacred office to be performed, with a certain income attached as retribution.

2. There are several kinds of chaplaincies with their relative chaplains; and, putting aside what are known as *cappellaniae mercenariae*, which consist only in alms for Masses, we have :

(1) *Cappellania collativa*, which consists in an endowment, without reservation, for Masses daily at a particular altar; or for a certain number of Masses every year. This chaplaincy has to be erected by the bishop, and then becomes a benefice, and the collation (*q.v.*) belongs to the bishop. This kind of chaplaincy confers a title (*q.v.*).

(2) *Cappellania iuris patronatus* or *gentilitia* is like the former, but it is reserved to the patron to nominate the chaplain, while the institution belongs to the bishop. The founder cannot make any conditions which will interfere with the bishop's right of institution.

3. A chaplaincy erected in one church cannot, without necessity, be transferred to another church.

4. Chaplaincies in a cathedral are mainly for the purpose of assisting in the sacred services; by common law these are appointed by the chapter.

5. There are various other kinds of chaplaincies, *e.g.* to convents, hospitals, prisons, pious institutions, the military, &c. &c., and the obligations attaching are defined by the bishop. These are not benefices.

## CHAPTER

### *Summary*

- ARTICLE I. The Nature of a Chapter.
- ARTICLE II. The Appointment to a Chapter.
- ARTICLE III. The Members of a Chapter.
- ARTICLE IV. The Chapter as the Assistants in ruling.
- ARTICLE V. The Chapter as the Cathedral Body.
- ARTICLE VI. The Chapter Meetings.
- ARTICLE VII. The Chapter's Duties and Privileges.
- ARTICLE VIII. The Chapter *sede vacante*.

### ARTICLE I

#### *The Nature of a Chapter*

1. A Chapter, in general, is defined : A college of clerics who, constituted under a prelate and making one body, are devoted, by the Church, to public divine worship.<sup>1</sup>

<sup>1</sup> The word 'Chapter' is also used for the meetings of the collegiate body, and for the supreme legislative body of a religious order.

2. There are two kinds of chapters :

(1) *Collegiate chapters* : which are erected in non-cathedral churches. They are of two kinds : (a) secular ; (b) regular. Of these there is no occasion to treat directly, as there are no secular collegiate chapters existing in English-speaking countries, and the regular chapters do not enter directly into the scope of this work.

(2) *Cathedral chapters* : about which we are directly concerned.

3. A cathedral chapter may thus be defined : A permanent college of clerics erected by the Holy See in a cathedral church for the purpose of helping the bishop in the government of the diocese, of carrying out the public worship, and of supplying for the episcopal jurisdiction *sede vacante*.

4. From this definition it is clear : The primary intention of a chapter is to help the bishop in the government of his diocese, and, *sede vacante*, to supply for his loss.

5. From the definition it is also clear : That the assistance at the divine services in the cathedral, a duty also incumbent on a chapter, is not the primary object of its institution. Hence, where a chapter is unable, for various reasons, to meet daily in the cathedral for divine worship, it is really and truly a canonical chapter.

6. From this can be deduced :

(1) The bishop's obligation to make use of his chapter in governing his diocese.

(2) The mutual relations of bishop and chapter are, as will be seen, well defined by law, which, if duly observed, ensures that there will be no antagonism but a most valuable mutual support and common interest.

(3) In no way can a chapter interfere with the lawful jurisdiction of the bishop ; for the primary object of its institution is to *help* the bishop, not to rule in his stead. He is the ruler ; the chapter is the instrument.

7. The chapter being attached to the cathedral church has certain duties imposed upon it by law. As churches exist for the purpose of divine worship, so the clergy appointed to a church are responsible for the due performance of the services of that church. The chapter being erected as the cathedral body is charged with the solemnisation of the cathedral worship.

8. The third duty of a chapter is to supply for the episcopal jurisdiction when the see becomes vacant, whether by death, translation, or resignation.

9. Hence the three duties of a chapter will have to be considered, viz. :

- (1) The chapter as the assistants in ruling.
- (2) The chapter as the cathedral body.
- (3) The chapter *sede vacante*.

10. From the definition we also see that by existing law it is necessary that a chapter be canonically erected by the Holy See as a permanent body in order to enjoy its duties and privileges.

11. The S.C.P.F., in a decree respecting the English chapters, speaks of them as forming the Church's senate and as being the bishop's advisers and chief assistants in the administration of the diocese. 21 April,  
1852

12. Before considering the duties, the election of members, the various offices and dignities attached to the capitular body require attention.

## ARTICLE II

### *The Appointment to a Chapter*

13. After the canonical erection of a chapter the persons composing it have to be appointed. The first nomination is generally left to the bishop, who is charged, by delegated Apostolic authority, to establish the chapter. Cf. De-  
cree  
S.C.P.F.  
21 April  
1852

14. In all subsequent appointments the common law comes into force.

15. By the fourth rule of the Roman Chancery the appointment to all dignities in a chapter is vested in the Pope.

16. By the ninth rule all vacancies, except those occurring by resignation, which fall in what are called the papal months, are reserved to the Holy See. These months are : January, February, April, May, July, August, October, and November.

17. The other vacancies are filled up *de iure communi* by the bishop together with the chapter.

18. But as bishops who keep the law of residence obtain an Indult giving them two of the papal months, and various methods are employed in different places to adjust the rights of both bishop and chapter in the matter of simultaneous appointment to vacancies, it comes out that, as a practical matter, the papal months are six in number, and consist of the odd-numbered months, while the even-numbered months are divided equally between the bishop and the chapter.

19. For a vacancy occurring during a papal month, the Pope is free to appoint whom he chooses ; as a matter of fact, the bishop generally recommends some one for the place.

20. During the other months the nominations alternate between the bishop absolutely and the chapter.

21. There are two important exceptions, however, from this for the cases of the canons penitentiary and theologian. As these are named after *concursum*, they are left out, as each occurs, in the arrangements between bishop and chapter. Should the vacancy for either of these offices fall in a papal month, the result of the *concursum* is to be sent to Rome and the appointment rests with the Pope.

Sess. xxiv.  
c. 12, d. r.

22. The Council of Trent orders that canons and dignitaries shall within two months of the day of their taking possession be bound to make a public profession of orthodox faith before the bishop or, if he be hindered, his vicar general, and also in the chapter.

The Fathers of the First Westminster Council decreed :

‘The rule for the appointment of canons shall be as follows : . . . the distinction being observed of months concerning the collation to be made by rescript from the Holy See, in the remaining months, let the nomination be made in alternate turns either freely by the bishop or by the chapter, with the understanding that as often as the proposition belongs to the chapter three ecclesiastics shall be presented to the bishop once, twice, and a third time, in order that a fitting and in every way commendable canon may be appointed. Otherwise the election shall belong freely to the bishop.’

xi. 7

23. As to the presentation by the chapter the Capitular Statutes order :

- (1) First that a Mass of the Holy Ghost be celebrated.
- (2) That three scrutators be elected.
- (3) That the voting shall be secret.
- (4) That the votes be given in writing without any previous discussion at the chapter meeting.
- (5) That they be taken in charge by the scrutators.
- (6) That the votes are to be so folded that only the name of the person proposed can be seen.
- (7) That the name of the proposer should be written inside and the voting paper be well secured ; and the writing should be different from the usual hand of the voter.
- (8) Then, by adding up the votes, it will be seen if anyone has

a *complete majority* of the votes of those present and of those absent but represented by proxies, but not of those who are absent and not so represented.

(9) As soon as the names have been made known after each scrutiny the votes should be burnt.

(10) Absentees cannot vote by letter, but only by proxies chosen from the chapter. And this authorisation cannot be made without a really necessary cause for the absence fully set forth and submitted to the chapter. If it be a case of ill health it should be stated that in the opinion of at least one doctor and one canon, whose signatures must be attached to the document, the member of the chapter in question cannot be present.

(11) The proxy must only be allowed to present three papers containing the names and surnames of those voted for.

(12) If on the first scrutiny no one has a majority, the votes should be taken again until some one gains the requisite number.

(13) The appointment of the second and third candidate must be managed in the same way.

(14) A document is then drawn up in this wise :

‘A canonry being vacant by reason of the death (resignation, &c.) of N. N. . . . the chapter held a meeting on the . . . . . day of . . . . . in the year . . . . . in which, after a Mass of the Holy Ghost, were chosen scrutators R. D. [N. N.], R. D. [N. N.], R. D. [N. N.]. After three scrutinies it is found that the three ecclesiastics whose names follow are, by a majority of the votes, to be proposed to the most illustrious and reverend bishop.

Scrutiny I. TITUS.

Scrutiny II. FRANCIS.

Scrutiny III. JOSEPH.

In testimony of which, &c.

A. *Provost.*

D. *Secretary.*

G. *Scrutators.*

M.

N.

Capitular  
Statutes.

(15) If the bishop do not accept one of these three names, then the chapter has to send up another three ; and even for a third time. If after nine names have been submitted and none of them are found suitable, *pro hac vice* the election remains to the bishop.

*Cf. I.  
West. xi. 7*

(16) The fact of appointment is to be made known by an official letter.



24. The Capitular Statutes decree that the admission of a newly appointed member of the chapter be carried out as follows :

(1) A canon on receipt of the letter of his promotion shall personally or at least by letter transmit a copy of the same to the Very Reverend the Provost, and shall request that he should be admitted to possession of his canonry.

(2) The provost shall then make known to him the day of the next chapter meeting at which he may present the aforesaid letter.

(3) The canon cannot use any privileges nor exercise any rights until he has taken possession of his canonry.

(4) On the day named by the chapter the new canon, supported by two canons invited by him, one on either side, shall present his letter of nomination to the chapter. Then he shall make profession of faith before the chapter. Moreover, what the Council of Trent commands under the penalties specified must be fulfilled, to wit, ' he is bound to make public profession of his orthodox faith in the hands of the bishop himself or, if he cannot be present, of his vicar general or official within two months at the most from the day of his taking possession, and to promise and swear that he will remain in obedience to the Roman Church.'

(5) And after that he shall make the following declaration :

' I N., canon elect of this cathedral church, declare that I receive with due reverence the statutes of this chapter, and I promise obedience concerning secrecy to be observed even under mortal sin, as often as the bishop or the chapter shall order.'

(6) Thereupon the Provost shall assign a stall to the canon elect, and in the name of the whole chapter shall address him in convenient words.

(7) The chapter cannot exact or accept anything from the new canon on account of the nomination or installation. It is to be desired that expense, as far as possible, may be avoided at all chapter meetings, and particularly in celebrating the entrance of new canons.

(8) If the bishop be present in chapter one profession of faith is enough. *Sede vacante* the profession is made before the vicar capitular.

25. It now remains to mention the way in which a canon once duly in possession can cease to hold office.

(1) A canonry, being a benefice, is perpetual ; hence a canon cannot be deprived of his canonry against his will except according to the sacred canons.

Capitular  
Statutes

S.C.C.  
18 April,  
1590

*cf.* Trent,  
Sess. xxi.  
cap. 6,  
*d. r.* and  
xxiv. cap.  
12, *d. r.*

(2) But a canon can renounce the right for a just cause by resignation (*q.v.*), which must be (a) spontaneous ; (b) free from all agreements ; (c) for a just cause ; (d) and accepted by the lawful superior.

(3) Such a resignation can be accepted by the bishop ; but he cannot receive a conditional resignation.

(4) The vicar general cannot receive a resignation without the special leave of the bishop, even as he cannot collate to benefices.

(5) A canon can resign his prebend but retain the canonry with its other rights.

### ARTICLE III

#### *The Members of a Chapter*

26. In considering the different persons who make up the chapter it is necessary first of all to say that there are two heads to the chapter as there are two ways in which it can be regarded.

(1) The *principal* head is the bishop ; for as the chapter is the senate of the Church and the *concilium natum* of the bishop, so he is the head thereof and the most noble member, and is truly of the body.

(2) The *numerical* head is he who is first among those who make up the chapter ; for, as it is a corporate body having rights and offices belonging to itself and distinct from the bishop, in this respect the bishop cannot be called the head : he is not of the body, and has no decisive vote in capitular business.

27. Who, then, is this numerical head ? It is disputed among canonists whether the dignitaries as such are members *de iure* of the chapter unless they are so by local statute, custom, or by having a stall. But interesting as this point may be, it is of no practical value, for in chapters existing in English-speaking countries the first dignity is without doubt both of the body of the chapter and its head. On the other hand, it is not of the essence of a chapter to have a numeral head in *act* ; it is enough if he be in *potentia*. Hence if he be dead or absent the chapter still exists and the senior canon then becomes head.

*Cf. Bouix, De Capitulis, p. 71*

28. In a chapter, as a corporate body, we find dignities—personates, offices, canons, and supernumeraries.

29. It will be well to give the definition of the first three, for although two have now somewhat of a restricted application, it is

necessary that they should be understood in their original meaning. Hence :

(1) A *dignity* is a beneficial title having annexed both precedence and jurisdiction.

(2) A *personate* is a beneficial title having annexed precedence but no jurisdiction.

(3) An *office* is a beneficial title having neither precedence nor jurisdiction.

30. Now that jurisdiction has been taken away from the *dignities*, they can be defined as beneficial titles to which jurisdiction was formerly annexed or which are held to be dignities by statute or custom. Hence it will be seen that to-day dignities *de facto* do not differ from *personates*, though *de iure* they do so by custom or statute.

31. The dignities or personates recognised to-day as being such are the archdeacon, the archpriest, the dean or provost, and any others who, by custom or statute, are reputed such : *e.g.* the precentor (*q.v.*), the sacrist (*q.v.*), and the chancellor (*q.v.*).

32. The offices are the theologian (*q.v.*), the penitentiary (*q.v.*), the succentor, punctator (*q.v.*), hebdomadarian (*q.v.*), together with the precentor (*q.v.*), sacrist, and chancellor if these be not regarded as dignities.

33. The actual arrangement of one chapter is a matter of local convenience and custom.

34. The canons themselves are divided into two classes :

(1) *Canon prebendaries*, i.e. those who have a prebend (*q.v.*) annexed to the stall.

(2) *Simple canons*, i.e. those who have no prebend.

35. Supernumeraries are those who do not belong properly to the capitular body but are in some way attached to it and are under its jurisdiction. These generally are :

(1) *Beneficiati* (*q.v.*).

(2) Honorary canons (*q.v.*).

(3) Chaplains (*q.v.*).

(4) Singers and musicians.

36. The vicar general *ex officio* does not belong to the chapter unless he be also a canon ; in which case he sits and votes in chapter by order of seniority, not by his vicarial dignity. If he be not a canon, he cannot be present without the consent of the chapter, or unless by custom or a special right. But his presence may be necessary to quell a disturbance within the chapter. Then

the canons are bound to admit him. In no case, unless he be a canon, has he any voice.

37. The coadjutor bishop (*q.v.*), unless he be a canon, has no place in the chapter. If he be a canon, he takes precedence by reason of the episcopal dignity, and the president when proposing anything, should, as it were, ask his leave by saluting him.

38. Without the consent of the chapter the bishop cannot create new dignities or new canonries. But if the chapter unjustly withholds its consent the Holy See can prescribe the creation. *Theaurus resolutionum* S.C.C. vol. xxxv. p. 12

39. On the other hand the bishop, with the consent of his chapter, can increase the number of canons unless the number has been fixed by the Holy See; for the bishop can *de iure* erect benefices. The S.C.C. decided that with the same consent the bishop could make dignities, provided that they were such as were usually found in cathedrals. 26 Nov. 1695, and 24 March, 1736

40. The First Westminster Council decreed *inter alia* :

(1) 'The chapter shall consist of ten canons and one dignity.' xi. 1

(2) 'The dignity in each chapter shall be distinguished with the title of Provost.' *Ibid.* 5

(3) 'In each chapter also a canon theologian and canon penitentiary must be appointed.' *Ibid.* 6

(4) 'There is to be no distinction of orders amongst the canons, or division into priests and deacons.' *Ibid.* 9

(5) 'Merely titular or, as they are called, honorary canons we forbid to be made.' *Ibid.* 11

(6) 'There shall be one dignity only—the provostship,' which is reserved to the Holy See. Capitular Statutes, 26

(7) 'In the chapter there shall be a canon theologian, who in the place, and on the days and hours appointed by the bishop, must give lectures on the subject also determined by him.' *Ibid.* 27

(8) 'There shall be likewise a canon penitentiary, who shall be obliged to hear confessions in the church appointed by the bishop in Advent, Lent, and at any other times of the year which the bishop may prescribe to him.' *Ibid.* 28

(9) 'When a vacancy occurs in the post of canon theologian or canon penitentiary there shall be a *concursus* [*q.v.*], &c.' *Ibid.* 29

(10) The same Capitular Statutes order the following officers to be appointed at the first meeting in each year: viz. secretary of the chapter, treasurer, sacristan, and master of the ceremonies.

41. By recent decrees of S.C.P.F. certain changes have been made in the above decrees.

(1) The number of canons has been increased in Westminster.

(2) Three honorary canons are now allowed to be appointed for each diocese.

S.C.P.F.  
2 April,  
1903

(3) A college of sixteen chaplains has been added to Westminster.

#### ARTICLE IV

##### *The Chapter as the Assistants in Ruling*

42. As the primary intention of the erection of a chapter is to provide a body of clergy to assist the bishop in the government of the diocese, it is necessary to state what their position is. In other words in what way must they be employed as assistants in ruling the diocese.

43. There are two modes recognised by law in which the chapter assists, viz. :

(1) By consent : that is, by a deliberate vote.

(2) By advice : that is, by a consultative vote.

44. The consent of the chapter is necessary for the validity of the bishop's act in the following cases :

(1) In alienations (*q.v.*) of the property of the church or chapter or the episcopal *mensa*, provided that it be concerning immoveable goods or precious moveables. Moreover, this consent must be explicit in perpetual alienations, such as gifts, sales, and exchanges. A tacit consent is sufficient in temporal alienations such as letting or pledging.

(2) In contracting a serious obligation for the church.

(3) In collating to benefices which are in the mutual gift of bishop and chapter.

(4) In suppressing canonries and uniting simple benefices on account of the smallness of the prebends.

(5) In uniting benefices for other causes. It is to be noted that the bishop can unite simple benefices to the prebends of the cathedral with the consent of the chapter, but he cannot unite them to the episcopal *mensa* nor to the capitular fund.

(6) In increasing or lessening the number of canons. Also in appointing honorary canons.

(7) In all business which may cause a notable prejudice to the Church or to successors.

(8) In instituting the observance of any particular feast.

(9) In appointing new examiners in place of the synodal examiners (*q.v.*). If the chapter unjustly deny consent to proposed by the bishop, he can have recourse to the Holy See, either to supply the defect or to make the chapter consent.

(10) In innovating anything contrary to the privileges or lawful customs of the chapter.

(11) In administering the goods and income of the cathedral.

(12) In committing to one person the cure of souls which belongs to the chapter.

45. The *advice* of the chapter is required :

(1) In the spiritual and temporal management of the seminary.

*See COMMISSION FOR SEMINARIES.*

(2) In making synodal laws. Benedict XIV. says that laws promulgated in synod without the previous advice of the chapter are null and void. *De Synodo, lib. viii. c. 1.*

(3) In all the more difficult matters concerning the administration of the diocese.

(4) In appointing a reader in theology.

(5) In instituting benefices and in their suppression.

(6) In arranging the chapter into various orders.

46. In those cases where the capitular consent or advice is required *de iure communi*, it is very necessary to attend to the custom of places. A chapter, however, has no initiative in matters that concern the administration of the diocese. *Cf. Santi, iii. p. 136.*

47. Moreover, it must be borne in mind that when the bishop acts by his delegated jurisdiction he is entirely independent either of the consent or the advice of his chapter.

48. Hence, beyond the cases where the consent or advice of the chapter is of obligation, it will always be ready and willing to be employed in every kind of work that will assist the bishop in government.

49. The First Westminster decreed :

(1) 'It is also fitting that the bishop should select from the body of the chapter, or from the clergy, prudent men to help him in the temporal administration of the diocese. He should often use their advice to the end that pious foundations may be managed in the best way and preserved in safety; and that the collections of the faithful may be distributed and applied wisely and profitably, and without any party spirit.' *xiv. 4*

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- Ibid.* 6 (2) 'It seems proper that two of these [for the commission of inquiry (*q.v.*)] should be members of the chapter, &c.'
- Capitular Statutes,<sup>1</sup> (3) 'Canons should bear in mind that they have been called as the senate of the bishop of the diocese, and therefore that they should assist him, and set an example to the clergy of the whole diocese in the practice of those virtues which specially become the ecclesiastical state.'
- Ibid.* 4 (4) 'We specially recommend the canons to direct their attention and means to the formation by degrees of prebends attached to the cathedral church to the end that by God's help canons residing at the church itself may perform the divine offices, and more easily may assist the bishop in governing the diocese.'
- Ibid.* 51 (5) 'The interpretation of statutes must be based upon the principles of the common law.'
- Ibid.* 52 (6) 'It must be remarked that *de iure* the consent of all the canons is sometimes requisite for the validity of capitular acts; but it is always necessary that there should be at least a majority of all those present; and, if it be a case of making new statutes, of at least two-thirds of the votes.'

## ARTICLE V

*The Chapter as the Cathedral Body*

50. The secondary purpose of a chapter is to provide a permanent body charged with the public worship of the cathedral church. From the obligation arising therefrom may be deduced these duties, viz. residence, choir, mass, association, assistance, and administration of the cathedral.

§ 1. *Residence*

51. Residence, by the common law, is of obligation for the chapter.

Trent,  
Sess. xxiv.  
cap. 12,  
d. 7.  
52. Canons, as individuals, are bound to nine months' residence in the year, unless the constitutions require a longer service.

53. Hence while the chapter can never be absent, the individual canons are allowed three months' vacation. This term contains ninety days, and may be taken continuously or with intervals.

54. But they cannot be all away together. The *quota* is to be

sanctioned both by the bishop and the chapter. As a rule, a third of the chapter may be absent.

55. No absence is allowed at Christmas, Easter, or at the greatest solemnities; nor during Advent or Lent. And, unless custom allows, neither on Sundays or feasts throughout the year.

56. Absence is to be counted by days not by hours.

57. A Council of York, approved of by the Holy See, allowed canons once in their lifetime to be absent for a pilgrimage to the Holy Land, and for six months, every five years, if they went to Romæ. The S.C.C. decided that this was not taken away by the Council of Trent.

58. Absence during the three months does not require the leave of the bishop if it be spent within the diocese; but if the canon goes out of the diocese he requires permission.

59. During absence the canon does not share in the distributions (*q.v.*), but only in the funds of his prebend (*q.v.*).

60. For a just reason leave can be obtained from the bishop for an absence of four months.

61. Unlawful absence is penalised by the Council of Trent :

Sess. xxiv.  
cap. 12

(1) In the first year the canon is to be deprived of half of the income; or in proportion if the absence be for months and not for the whole year.

(2) In the second year all the income is forfeited.

(3) In the third year he loses his title altogether.

62. The excuses for absence that are generally accepted are :

(1) Christian charity, *e.g.* for healing disputes, &c.

(2) Urgent necessity, *e.g.* illness, persecution, fear, pilgrimage.

(3) Due obedience, *e.g.* the service of the Pope.

(4) Use of the Church or state, *e.g.* four years at study; two canons in the service of the bishop.

## § 2. Choir

63. The chapter is bound to the whole office every day.

64. It must be celebrated in the choir of the Church; and the bishop cannot grant leave for its celebration in the sacristy.

65. It must take place at the appointed hours.

66. The canons are bound, under pain of restitution, to recite or sing in choir with the others. They do not satisfy by mere attendance.

67. The chapter is not bound to recite the Gradual nor Penitential Psalms, nor the Little Office of Our Lady, nor the Office of the Dead, otherwise than Pius V., *Constit. Quod a nobis*, 1568, ordains.



68. Canons who go out of choir without leave *per modum salutationis* are liable to be marked by the punctator (*q.v.*), who is also ordered to mark those talking without necessity.

69. In the absence of the *hebdomadarius* the junior canon supplies.

### § 3. *The Mass*

Pignatelli,  
vol. i.  
Consult.  
321, n. 2

70. The canons are obliged to sing the daily chapter or conventual mass, and this is a grave obligation binding under mortal sin ; and its omission is of a more serious nature than the omission of the office, for the worship of sacrifice is more important than that of the canonical hours.

71. The mass is to be that of the day. Even when, for another reason, a votive mass is to be sung, the conventual mass must not be omitted.

72. In Advent, Lent, Ember days, Rogations, &c., two masses, one of the feast and one of the feria, must be sung. It may even occur, on the Vigil of the Ascension, if a double feast be also kept, that three masses are of obligation, *e.g.* the Feast, the Rogation, and the Vigil.

73. The chapter mass is to be applied for benefactors and founders. No alms can be received for it, notwithstanding any custom to the contrary.

74. For this mass a distribution (*q.v.*) is due from the capitular common fund.

75. The canon who says the mass has also to sing vespers on the same day.

76. If a canon be prevented lawfully from doing his office, then another of the same grade, not of a lower grade, has to supply.

Gardi-  
nelli, 4520

77. On days when the bishop pontificates, the *hebdomadarius*, or other who has the duty of celebrating the conventual mass, is bound to say it either before or after the bishop's mass.

78. In the absence of the bishop, the masses which are his right do not belong to the *hebdomadarius*, but to the dignities in their order, or to the senior canon.

79. A canon singing mass should have canons for deacon and subdeacon. The contrary custom is an abuse and corruption.

80. If the dignity or senior canon wish in the absence of the bishop to bless the candles, ashes, or palms, he must also sing the mass; otherwise the one who celebrates officiates also at the blessings.

§ 4. *Association*

81. The chapter is bound to give to the diocesan bishop the honour of association on certain occasions.

82. The canons, in their choral dress, are obliged to go to the house of the bishop and to accompany him to the cathedral whenever he is going to celebrate or is coming *in cappa magna* to assist at the divine offices. They are also obliged to accompany him back to his house after the function is finished.

83. The S.C.R., 14 July, 1605, decreed that this obligation is not one of urbanity but a debt.

84. The obligation exists even when the bishop's house is not next to the church. But if it be further off than over two hundred paces, he should be accompanied to some definite spot agreed upon, such as the courtyard of the church or the bottom of the steps, &c.

85. In order that the chapter be not wanting in this assistance, and also that the office may not be disturbed, the canons should be warned in due time of the certain hour of the bishop's arrival.

86. If he be unpunctual, and the last signal be given by the bell, the chapter is released and can begin the office without awaiting the bishop.

87. Four or five canons, or at least two, in the name of the chapter, have to wait to accompany the bishop, if he come after the office is begun.

88. Three or four also accompany the bishop, as far as the door of the church, if he retire after the service.

89. The chapter accompany the bishop when he leaves after mass and before sext; they then return to the choir for the office.

90. The law of association binds dignities as well as the rest.

91. The chapter are not bound except out of urbanity to give association to the bishop when he comes to the church privately, *i.e.* without *cappa*; and it is enough if some meet him at the church door to offer him holy water. These also accompany him back so far. In all this, custom has to be observed.

92. The chapter is not bound, except by politeness, to give association to the bishop when he comes to the chapter-house.

93. In the case of a coadjutor or a suffragan coming to the church to celebrate in place of the ordinary, the chapter is not bound to association. It will be sufficient for some canons to meet him at the church door. But if with leave he wears the *cappa*, two canons are bound to accompany him from and to the door.

§ 5. *Assistance*

94. The assistance due by the chapter to the bishop when he is officiating has to be given according to the *Caeremoniale Episcoporum*, not only in the cathedral but in all the other churches of the diocese, unless there be a laudable and immemorial custom to the contrary.

95. The more dignified and honourable members of the chapter must assist the bishop: and this under penalties and censure.

96. The assistance of two canons is always due to the ordinary bishop, whether he celebrates or assists, especially when he is *paratus*.

97. Two canons must assist at ordinations, whether the service be sung or said.

98. This assistance is due in every church of the city, but not beyond, whenever the bishop exercises solemn pontifical functions; but a sufficient number of the chapter must be left to carry out the service in the cathedral.

99. It belongs to the chapter to assist the bishop when he pontificates away from the cathedral, even in exempt churches.

100. The chapter is also bound to provide the assistance for another bishop when he exercises pontifical functions in the name of the ordinary. But only those necessary for ministering are *parati*.

101. When canons are assisting the bishop in the cathedral or elsewhere they are to be considered as being in choir.

§ 6. *The Administration of the Cathedral*

102. The government and administration of the cathedral belong to the bishop and to the chapter together. Hence both can frame statutes for this purpose; but neither, without mutual consent, can add to or change existing laws. But see p. 169 (8).

103. But either party ought to yield to the other and assent to the statutes proposed, unless they are unreasonable.

104. It belongs to the chapter, not to the bishop, to elect the choir master and the singers, unless this be a part of the administration reserved sometimes to the bishop.

105. Where there is a canonical parish the nomination of a vicar for the cure of souls attached to the cathedral belongs to the chapter; but the approbation and examination belong to the bishop.

106. The bishop can insist that the vicar should be perpetual.

S.R.C.  
21 Feb.  
1604

Bouix,  
*De*  
*Capitulis*,  
p. 325

*Cf. S. Pius*  
*V. Con-*  
*stitut. Ad*  
*cæquen-*  
*dum*, 1567

107. Although the Council of Trent gives to bishops the power of prescribing the form of the choral worship, the power of the chapter about the same is not excluded.

108. The canon theologian (*q.v.*) has to give in the cathedral, or in some place connected, public lectures for clergy and laity on Sacred Scripture or dogmatic theology (or, according to Benedict XIV., on moral theology or even canon law) at the time and in the manner prescribed, according to reasonable custom, by the bishop. The theologian is obliged to give at least forty lectures in the year.

*De Synodo,*  
lib. xiii.  
cap. 9

109. The canon penitentiary (*q.v.*) is the official confessor of the cathedral, and has *ex officio* jurisdiction for the whole diocese. He is bound to attend for the more solemn feasts and in the time of Advent and Lent, Ember Days, &c.

### § 7. Provincial Laws

110. The Westminster Councils have decreed the following arrangements : I. West.  
xi. 8.

(1) 'As we have no canonical prebends and the canons have to devote themselves generally to the cure of souls or to teaching in the seminaries, they are by Pontifical authority exempted from the duty of residence and from keeping choir in the cathedral; provided that once a month they attend choir and go through the divine office on the days selected by the bishop at the beginning of each year, note being taken of any particular festival occurring within each month.

(2) 'The remarkable earnestness with which members of chapters have abundantly fulfilled their duties is worthy of special praise; all the more so, as everyone is aware of the many and great difficulties that stand in the way of the discharge of these duties. Chief among them is to be noted the absence of prebends, and hence that, as the canons cannot live at the cathedral church, they are dispersed up and down the diocese, attending to duties on missions, at colleges or in other ecclesiastical ways, and for these and other reasons of this kind they are to a great extent exempted by Pontifical authority from the obligation of residence and keeping choir. Nevertheless, those who take unto themselves honours and offices should remember that they also take the burdens; and that canons, according to the capitular statutes, are bound to be present at choir, and to attend the chapter meeting every month on the day fixed by the bishop, unless they have obtained

IV. West.  
viii. 1

leave of absence from the bishop, according to the faculty granted by the Holy See.<sup>1</sup>

Capitular  
Statutes,  
4, 5

(3) 'We specially recommend the canons to direct their endeavours and means to the foundation by degrees of prebends attached to the cathedral church, so that, by God's help, canons residing at the church may perform the divine office therein, and more easily assist the bishop in governing the diocese. The canons should for this end often call upon the help and intercession of the saint to whom the cathedral church is dedicated.

*Ibid.* 17

(4) 'Following the decree of the S.C.P.F. we enjoin that each canon, not legitimately hindered, shall repair to the cathedral church every month on the days named by the bishop at the beginning of each year to recite in psalmody tierce of the day and then to assist at high mass, saving, of course, the rights of the chapter to assemble more frequently, with the bishop's consent, however, and also the right of the bishop to convoke a meeting whensoever he wishes. The offices of celebrant and of ministers are to be so divided as to be filled regularly by all the canons. But whenever the bishop celebrates, he has the right to choose his assistants without any regard to the order of precedence.

*Ibid.* 18,  
19, 20

(5) 'Tierce shall begin about ten o'clock, and all should be present at it; the senior canon present in choir shall take the place of the Hebdomadarius should the Provost have to leave in order to put on the vestments. Two of the canons selected annually for this duty shall be named cantors, and must lead the singing. They shall recite all together the canonical hours, in a high and clear tone, worthily, attentively, and devoutly, nor may one side of the choir begin its verse until the other has finished, a fitting slight pause being always made at the asterisk. Everyone reading the office with others is bound to share in the whole recitation, supplying by listening for the part not recited by him. Following the rubrics and with due regard to the particular time and office, all should be together and alike in rising, standing, sitting, genuflecting, covering or uncovering the head with the *biretta*, and in bowing; and all should sing together with one accord of voice and upraising of the mind or assist in the same position of body.

*Ibid.* 21,  
22

(6) 'The canons should remember that at the mass they are bound not only to be present, but to use their voices, and must, two and two, recite in a low tone those portions prescribed by the rubrics. Since the cathedral should excel all the other churches

<sup>1</sup> This faculty only extends, according to the decree S.C.P.F. 21 Jan. 1855, to the case of one or two of the canons. The monthly meetings are not to be omitted.

in matters concerning the divine worship, all should assist at the celebration of mass with the greatest devotion, piety, and gravity, and strictly observe the rubrics of the Missal and Ceremonial and the authentic answers and decrees of the S.C.R.

(7) 'Following the decree of the Sacred Congregation of Cardinals Interpreters of the Holy Council of Trent, two canons, one appointed by the bishop, the other by the chapter, shall be charged to watch over the exact observance of everything pertaining to the fitting recitation of mass and the divine offices. *Ibid.* 23

(8) 'The whole right of the temporal and spiritual administration of the cathedral church shall belong to the bishop unless it shall be otherwise provided by the authority of the Holy See. The chapters, however, have the power to carry on the divine office therein. *Ibid.* 24

(9) 'In the chapter there shall be a canon theologian, who at the place, day, and hour prescribed by the bishop must give lectures upon the subject appointed also by him. *Ibid.* 27

(10) 'There shall be likewise a canon penitentiary, who shall be obliged to hear confessions in the church appointed by the bishop in Advent, Lent, and at any other times of the year which the bishop shall prescribe to him. *Ibid.* 28

(11) 'The master of ceremonies and the sacristan must take care that the church be got ready for the capitular functions that have to be carried on therein. *Ibid.* 34

(12) 'They shall likewise fulfil the duty of pricking the attendances: that is, they must note those canons who are absent and keep a record in the chapter-book of those who are present. It shall be open to the bishop to ask for and examine the book containing the attendances of the canons.' *Ibid.*

## ARTICLE VI

### *The Chapter Meetings*

111. All and each who have a voice in the chapter are bound to attend the ordinary and extraordinary meetings, provided that it be lawfully summoned. For to hold chapter-meetings is necessary for the due government of the church. So say all canonists. Bouix holds that this obligation, at least for the extraordinary meetings, is of the same force as that of keeping choir. The obligation extends to the end of the meeting; and those who leave

before it be over are subject to be punished as though they were absentees.

Bouix,  
p. 196  
S.C.C.  
26 Nov.  
1650  
*Cf. Fer-  
raris,  
Canonica-  
tus*, art.  
11, n. 11  
Bouix,  
p. 192

112. The chapter is to be held *ex iure communi* in the church or in the place set aside for this purpose, *e.g.* in the chapter-house, and it cannot be transferred to another place without a just cause. Regularly speaking, the bishop cannot convoke the chapter in his own house, unless there be a custom to that effect. The bishop can call the canons to his house, and they are bound to go; but they are not bound to go when called by the vicar.

113. It belongs to the first dignitary to convoke the meetings. He must do this not only for the regularly fixed days, but as often as seems expedient for the service of the church, and as often as the canons require a meeting.

114. If the first dignitary be prevented by any just cause from summoning a chapter, the duty falls upon the next in rank, or, if the custom exist, the senior canon.

115. The vicar general cannot convoke the chapter in the absence of the bishop unless in those matters concerning which, according to his faculties, he is the judge.

116. There are cases provided by law when a chapter meeting can be convoked by some one else than the one who has the ordinary right. If all the chapter agree, the meeting can be convoked, *renuente capite*, by the next person in rank, after the due request has been made to, and refused by, the head.

117. For a convocation to be canonical it must be remembered that these meetings are either ordinary or extraordinary:

(1) If *ordinary*, no convocation is necessary, for the canons must know of the meeting. If, however, any special and important matter is to be dealt with, it should be made known to all.

(2) If *extraordinary*, everyone present in the place and not too far away has to be summoned. The day, hour, place must be indicated, and the notices sent out at least a day before the meeting.

Bouix,  
p. 460

118. The S.C.C., 9 May, 1637, decreed that the canons could summon a chapter meeting without the bishop and without his leave, unless it proposed to treat of matters concerning the episcopal *mensa*. The bishop cannot change this custom, for his leave is only required in the case where the persons assembling do not form a college; and even these can meet together without leave in certain cases: *e.g.* for instituting a cause against the bishop.

119. The exceptions to the chapter's power of meeting without the leave of the bishop are two:

(1) If there be the custom of not meeting without his leave.

But the bishop cannot insist upon being informed as to the nature of the business to be transacted. S.C.E.R.  
25 Jan.  
1703

(2) The bishop can, for grave and reasonable cause, sometimes suspend or forbid the meeting of chapter. But in this case he may have to prove before a court of appeal that his action was just. S.C.C.  
6 Feb.  
1700

120. Freedom of discussion is necessary. Hence if the bishop is present in chapter, he is bound to retire if questions arise concerning himself or his relations: unless the matter affect the episcopal dignity. The same applies to the vicar general if he be a canon. Bouix,  
p. 285

121. The chapter at meetings can establish statutes, without the bishop's consent, in the lesser matters which do not regard the general state of the church, the bishop or his rights. This is certain. They have no right of initiative in the affairs of the diocese.

122. The chapter can also establish penal laws for the body, provided that the punishment does not exceed what is called mere economical jurisdiction. But it cannot deprive canons of a vote or declare them incapable of holding office. Bouix,  
p. 450

123. The chapter can pass laws concerning the administration of the cathedral: but these require the consent of the bishop. Also the chapter can consent to any such laws proposed by the bishop. See p. 166, n. 102.

124. The administration of the property belonging to the prebends, and also to the other beneficed clergy and chaplains, pertains to the chapter. Also the administration of the alms, anniversaries and other pious offerings, especially those which depend *a iure parochiali*. Bouix,  
p. 461

125. Immediately a chapter is elected canonically it has *de iure communi* the power of making statutes for itself.

126. Changing, correcting or abolishing existing statutes belongs to those to whom *de iure* belonged the making. Therefore, what the chapter by itself ordained it can change, unless pontifical confirmation were had. Laws passed by the mutual consent of bishop and chapter can only be changed by a like mutual consent.

127. Statutes lawfully established can be changed not only by the makers but also by their successors; and transgressors can be punished. Hence it is probable that chapters have a real jurisdiction.

128. The bishop can lay his orders upon the chapter, provided that he does not demand from them more than the law allows, for while he has jurisdiction over the chapter as over the rest of his clergy, both the matter and subject depend on the Pope. But in doubtful matters the presumption is in the bishop's favour. Bouix, pp.  
289-291

129. Both the bishop and the vicar general have the right to



oblige the chapter to show them the books in which the capitular resolutions are entered, even if they concern the private affairs of the chapter. The reason is because the bishop has the right to prevent any resolution being passed which may be contrary to law.

130. Hence in the chapter book are to be entered only the resolutions passed: not what was said or what arguments were used by individual canons. About these, which concern the freedom of discussion, the bishop has no right to know. His province is concerning what was done or resolved.

131. The Westminster Council thus decrees:

Capitular  
Statutes,  
35

(1) 'Ordinary meetings should be held on the days indicated immediately after mass; extraordinary meetings as often as the bishop wishes them, or the provost of the chapter convokes them.

(2) 'When requested by a majority of the canons to convoke a chapter the provost is bound to do so, provided the petition for it be couched in the following terms:

"We, the undersigned, pray that chapter may be convened on the . . . day of . . . in the year . . . at . . . o'clock, we ourselves testifying that we require this for weighty reasons, and that the time named will be convenient for all the chapter."

(3) 'The bishop's assent to an extraordinary chapter of this nature must be obtained of necessity,<sup>1</sup> and he will also direct when it is to be held in his own house.

*Ibid.* 36

(4) 'Canons must be summoned to both ordinary and extraordinary meetings by a letter of the following kind:

"Reverend Sir,—A chapter meeting will be held in the chapter room (or at the house of his Right Reverend Lordship the Bishop) on . . . at . . . o'clock. By command of the Bishop (or Provost).  
N. Secretary."

*Ibid.* 37

(5) 'A quarter of an hour after the appointed time, the provost or senior canon shall warn the canons by ringing a bell that the meeting has begun, and all kneeling down shall say the prayer *Adsumus, Domine*.

*Ibid.* 39

(6) 'Then all shall take their seats in the order of canonries: that is to say, of the date of taking possession, beginning with the youngest members of the chapter; all who wish to speak shall give their opinion on the business laid before them by the provost, or by any other canon called upon by him, if possible by the one who has suggested the question to be discussed.

<sup>1</sup> The bishop's consent to the holding of an extraordinary chapter is necessary; but he has no right or power to insist upon knowing the subject to be discussed. This is not necessary even in the demand made to the provost. After the meeting is over, then the bishop can insist upon seeing the book of capitular resolutions.

(7) 'When anyone has once stated his opinion he shall remain silent, and cannot speak again without leave of the chapter.

(8) 'Finally, by the 36 Constitution of Alexander VII. each one shall give his vote secretly under pain of nullity.

(9) 'Whenever there is a question which touches upon the interest *Ibid.* 40 of any member of the chapter or of his relations to the second decree inclusively, such canon cannot be present at the chapter, so far as that business is concerned, in order that the vote of the others may be more free; otherwise let the act itself be void.

(10) 'If three canons are present at the appointed time, the business of the chapter may be gone on with, even though the dignitary be absent, provided that the summoning of the chapter 41 was made canonically.

(11) 'The antiphon of the Blessed Virgin Mary, for the time of 38 the year, shall be said at the end of the chapter.

(12) 'The secretary must write out accurately the acts of the chapter and, at the next meeting, read before the whole chapter 32 all the documents to be issued in its name or that have been addressed to it. For these documents to be deemed authentic, they must have the seal of the chapter and the signature of the provost and of the secretary, or of those who by the authority of the chapter happen, to be taking their places.

(13) 'The custody of the seal belongs to the provost and to the 32 secretary, and should be under two different kinds of lock and key.

(14) 'At the January meeting, the treasurer shall give an 33 account of all the moneys in any way belonging to the chapter, and he cannot part with any of them without a decree of the chapter.

(15) 'On the death of the bishop all the canons shall meet together to assist with due respect at the funeral. And within eight days from the bishop's death the chapter shall, by a free election, appoint its vicar with power to rule the diocese in accordance with canon law. And he, once appointed, cannot be set aside by the chapter or have anyone associated with him in his 42 office.

(16) 'Copies of resolutions of chapter cannot be withheld from the bishop by the canons should he require them, inasmuch as it is his duty to watch and see that nothing is decreed by the chapter contrary to law, or prejudicial to the Church, and he can exact them from the canons by recourse to penalties and censures. And this, notwithstanding any contentions there may be between the bishop and the chapter, not only because in them (*the resolutions*) the motives, morals, and secret reasons connected with

any case are not put down, but especially for this reason, that, although the bishop cannot interfere in the chapter lest freedom of voting should be taken away from the canons, yet when they have passed a resolution such a reason for withholding such resolutions no longer exists.

50

IV. West.  
viii. 2

(17) 'The canons must lay before the bishop when he is in the city even the books of the chapter as often as he may reasonably require them to do so.

Capit.  
Stat.  
51

(18) 'The interpretation of statutes must be based upon the principle of common law.

52

(19) 'It must be remarked that by common law the consent of all the canons is sometimes requisite for the validity of capitular acts; but it is always necessary that there should be, at least, a majority of all those present, and, if it be a case of making new statutes, of at least two thirds of the votes.'

N.B.—For the duties of canons in electing three names in the recommendation for the episcopate see page 86.

132. 'The members of the chapter should bear in mind the greatness of this privilege [*of electing three names in the recommendation for a vacant see*] and its responsibility as regards the happiness and prosperity of the diocese, seeing that on their judgment and honesty will depend the unity of the clergy, the good estate of the diocese, the peace of the flock. For as the bishop is so is the Church. Hence in selecting names the members of the chapter should not confine themselves to the chapter or to the diocese, but should take note of men especially fit even out of the diocese who should not be merely endowed with the necessary gifts but eminent also for their ability in human affairs as well as divine. . . . In sending in the names of those nominated by the chapter, the canons should not neglect to send also to the metropolitan, or to the bishop who has taken his place, any facts concerning the person recommended, so far as they can do so. [N.B.—See page 83.]

IV. West.  
viii. 3

133. The S.C.P.F., January 23, 1855, decreed that the bishops of England, for good reasons, might dispense with one or two of their canons from taking part in the monthly meeting, yet so, however, that the aforesaid meetings are not omitted.

134. The same Sacred Congregation decreed, April 5, 1852 :

'Seeing that the singular merit of the monastic Order of St. Benedict in reference to the extension of the Christian religion throughout England is manifest, and to such an extent that this Institute has deserved to be enriched with special privileges for the good of that Church, the cathedral chapter of the diocese

of Menevia and Newport (now Newport only), at the desire of the bishops, is to be drawn from the English Benedictine Congregation. But with the understanding that there should remain intact the right of the Holy Apostolic See to select the bishop even from amongst those who were not monks, so often as necessity or utility might demand it.<sup>1</sup>

135. The First Westminster Council, therefore, decreed that in this diocese the cathedral chapter shall be the same as the monastic chapter. The prelate of this chapter is called the cathedral prior, and has the rights of *pontificalia*. Pius IX., April 22, 1860, granted leave temporally that there might be six members of the chapter resident and four non-resident.<sup>1</sup> xi. 3

## ARTICLE VII

### *The Chapter's Duties and Privileges*

136. The chapter as such cannot be excommunicated by the bishop, but only by the Pope.

137. The chapter as such can, as a rule, be suspended for grave reasons; but in this case the suspension only falls upon the body, not upon the canons as individuals.

138. The chapter, however, cannot be suspended for a pecuniary debt.

139. The chapter is competent to confer benefices, even *privative*, as regards the bishop. It can also exercise the rights of patronage (*q.v.*).

140. The chapter can grant letters dimissorial should a bishop become a heretic.

141. The chapter has a right to be called and admitted to a Provincial Council.

142. The chapter enjoys this exemption by the Council of Trent, viz. the bishop cannot proceed against a canon *extra visitationem* without having two canons, who are to be selected each year by the chapter, joined with him. Sess. xxv.  
cap. 6

143. The chapter, as the senate of the Church and assistants in governing the diocese, has a right to certain privileges in the way of choral habits and others of an honorific kind. These have

<sup>1</sup> At that time the real nature of what was so marked a feature of Catholic England does not seem to have been fully understood. There were no such persons as canons in the secular sense, and the bishop *ex officio* was abbat of his cathedral monastery. Hence the resident superior was called a prior, but had abbatial rights of *pontificalia*.

to be obtained from the Holy See, and cannot be introduced or changed without leave.

**144.** The chapter has precedence over other clergy only when they act *capitulariter*. Hence, as outside of the cathedral the chapter has no jurisdiction, canons, as individuals, have no precedence over the other clergy. To enjoy this they must be represented as a chapter, three making the *quorum*, with the capitular cross.

Gardi-  
nelli,  
n. 3934

**145.** The canons deputed for the administration of the seminary (*q.v.*) have precedence over the other deputies.

**146.** Canons in other churches of the diocese cannot as individuals either use the canonical habit, except by custom, or claim precedence over the other clergy. They cannot use the habit when administering sacraments.

S.R.C.  
2 October,  
1683

**147.** In processions made with the assistance of the chapter the *beneficiarii* of the cathedral have precedence before the college of parish priests.

**148.** A canon who is a bishop precedes all the other canons and dignitaries, and wears the usual episcopal dress.

**149.** A vicar general, if a canon, takes his place in order of seniority when among the canons.

**150.** If there are prebends attached to the stalls, one third of the amount should be set aside for distributions (*q.v.*), which are shared only by those actually present in choir *capitulariter*.

Bouix,  
p. 519

**151.** Canons should never act as deacons or subdeacons to others of a lower order, notwithstanding any custom to the contrary.

**152.** The head of the chapter precedes the others, and to him belongs the duty of carrying out the functions reserved to the bishop if he should be prevented from officiating. This duty so specially belongs to the head of the chapter that the bishop cannot commit it to his vicar-general. If the head dignitary be unable, it falls *de iure* to the next in order.

**153.** The first dignitary has the right of administering the sacraments to the dying bishop and of celebrating the funeral office. This also falls to the next in order if the necessity arise. [N.B.—See page 108-9.]

**154.** He also performs the office of assistant priest to the bishop when celebrating in pontificals.

**155.** When he celebrates for the bishop he has two canons as deacon and subdeacon.

**156.** Canons jubilarian are those who continuously for forty years have served the choir in a praiseworthy manner. They

have the privilege of absence from choir without losing either the fruit of their prebend or their share in the distributions. But as this right does not come *iure communi*, it should be expressed in the statutes. This privilege applies also to the *beneficiati*.

157. The chapter not only has the right, but is bound, *sub gravi*, to admonish the bishop, with all reverence and humility, if he do anything against the faith or the rights of the Church. They are also bound to bring the case before the Holy See. The chapter also should warn the bishop if he observe not the law of residence.

Bouix,  
p. 469

158. The fathers of the First Council of Westminster decreed :

(1) 'Canons should bear in mind that they have been called to the senate of the bishop of the diocese, and therefore that they should assist him and be an example to the clergy of the whole diocese in the practice of those virtues that especially become the ecclesiastical state.

(2) 'It is expedient that each should often read the statutes of chapter, the better and more surely to keep what is laid down therein.

(3) 'Each should carefully gather, from the sacred canons and authentic interpretations of the same, what are the obligations and what are the rights of canons, that whilst they give due consideration to these they may rigorously fulfil those.'

Capit.  
Stat. 1-3

## ARTICLE VIII

### *The Chapter sede vacante*

159. When the see becomes vacant all the episcopal ordinary jurisdiction passes to the chapter, also all that by custom belongs to the bishop. The real privileges belong to them but not the personal ones. They also succeed to those powers perpetually delegated.

160. If the see become vacant by resignation or translation the chapter comes into its canonical rights as soon as certain news is received of the resignation being accepted or the translation effected. As is seen in the case of bishops (page 117) the certain news may come any way provided it be from a sure source. The arrival of the Apostolic letters need not be waited for before the chapter proceeds to make use of its jurisdiction.

161. *Sede vacante* the chapter can make no innovations; it cannot confer benefices belonging to the bishop or in the joint

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gift of bishop and chapter ; but in cases of patronage, however, institution can be given.

162. The chapter cannot grant letters dimissorial during the first year except in cases where the cleric is bound to receive orders within a certain period.

Sess. xxiv.  
c. 16, d. r.

163. The Council of Trent orders that one or more faithful and diligent administrators (*Oeconomi*) should be appointed at once.

164. Within eight days after the vacancy the chapter has to be convoked for the purpose of electing secretly and by a majority of votes one who should rule the diocese in the name of the chapter. Hitherto the jurisdiction has been in the body ; it must now be exercised by a vicar capitular (*q.v.*).

165. If the chapter neglect to do this duty within the time fixed by law it falls on the metropolitan to appoint the vicar capitular, and on the Holy See should he also neglect the duty.

166. It is left free to the chapter to exercise the jurisdiction, as a body, until the eighth day, and Craisson says that it should so be exercised (n. 1222). It can easily be seen that there may be cases where it is advisable that for the whole period allowed by law the chapter should retain the active jurisdiction.

167. The chapter can only elect one person as vicar, who should be a doctor in canon law ; and if there be one in the chapter he is bound to be elected. If there be none in the chapter he can be sought elsewhere outside of the body, or some canon, otherwise fit, can be elected.

168. The Westminster Synods decree :

I. West.  
xii. 1

(1) 'On the death, therefore, of a bishop, after the funeral ceremony has been duly performed, the canons shall meet together, and under the presidency of the provost they shall go through everything prescribed by law for the election of a vicar capitular. And this shall be done within eight days.'

(2) 'On the death of the bishop all the canons shall meet together to assist with due respect at the funeral. And within eight days from the bishop's death the chapter shall, by a free election, appoint its vicar with power to govern the diocese in accordance with the canon law. And he, when once appointed, cannot be set aside by the chapter or have anyone associated with him in his office.'

Capitular  
Statutes,  
42

<sup>1</sup> This would seem to mean that the eight days count from the funeral, not from the death. But that this is not the case is clear from the next extract, which is in perfect conformity with the law.

## CHOIR

1. The recent legislation concerning choirs of singers is contained in decrees of the S.C.R. and in the *Motu Proprio* of Pius X., which is a juridical code of sacred music.

2. The Sacred Congregation by a decree dated 19 February, 1903, in reply to the Bishop of Plock declared that the custom existing there and in other dioceses of Poland of having a mixed chorus of men and women in a choir above the great doors of the church was not lawful and could not be tolerated. The Sacred Congregation also declared that a former decree (n. 3964) of 17 September, 1897, extended to the present case. The manner of removing such an abuse, and also the opportunity, is naturally in the determination, primarily, of the bishop.

3. The important *Motu Proprio* of Pius X. was issued 22 November, 1903, and after treating of the general principles, the different kinds of sacred music (*q.v.*), the liturgical text, the external form of sacred composition, the Pope regulates the singers in the following words :

(1) 'With the exception of the melodies proper to the celebrant at the altar and to the ministers, which must always be sung only in the Gregorian song and without the accompaniment of the organ, all the rest of the liturgical song belongs to the choir of levites, and, therefore, the singers in church, even when they are laymen, are really taking the place of the ecclesiastical choir. Hence the music rendered by them must, at least for the greater part, retain the character of choral music.

(2) 'By this it is not to be understood that solos are entirely excluded. But solo singing should never predominate in such a way as to have the greater part of the liturgical song executed in that manner; rather it should have the character of an *accenno* or a melodious *spunto*, and be strictly bound up with the rest of the composition in choral form.

(3) 'On the same principle it follows that singers in church have a real liturgical office, and that therefore women, as being incapable of exercising such office, cannot be admitted to form part of the choir or of the musical chapel. Whenever, then, it is desired to employ the high tones of sopranos and contraltos, these parts must be taken by boys according to the most ancient usage of the Church.

(4) 'Finally, only those are to be admitted to form part of the

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musical chapel of a church who are men of known piety and purity of life, and those should by their modest and devout bearing during the liturgical functions show that they are worthy of the holy office they exercise. It will also be fitting that singers while singing in church wear the ecclesiastical habit and surplice, and that they be hidden behind grilles when the choir is much open to the gaze of the public.'

4. On the question whether non-Catholics are allowed to sing in our choirs two decrees should be noted.

*Collec-  
tanea,  
S.C.P.F.  
(ed. 1893),  
no. 1845*

(1) The Holy Office by a decree, 7 July, 1864, replied in the negative to the question whether heretics could be allowed to sing in our churches. The question as put by the archbishop of Smyrna was: 'Si possono gli eretici far cantare nelle nostre chiese ed assistere all' altare per servire la Messa?' And the reply was: '*Ad utramque partem: negative.*'

*Ibid.  
no. 1851*

(2) The same Sacred Congregation, 1 May, 1889, refused to allow even heretical, schismatical, or Jewish children frequenting Catholic schools to sing in our churches, although Catholic singers were scarce. The reply was that the abuse should be done away with as speedily and efficaciously as possible, and meanwhile that Catholic boys should be taught accurately to sing the liturgical chant.

## CHRISTIAN BURIAL

1. Christian burial is one of the privileges which the Church gives to her faithful children. It is her will that her dead should rest in blessed ground.

2. But she denies Christian burial to those who die in rebellion to her authority. And these are of two kinds, viz.:

(1) Those who are under censure.

(2) Those who die in certain sinful states.

3. As regards censure. The general rule obtains, viz. those with whom we have not communicated during life we cannot communicate with when dead. Hence these are deprived of Christian burial:

(1) All non-baptized persons.

(2) Heretics of every kind, their favourers, defenders, receivers, schismatics as formally as if they are *vitandi*.

(3) Those excommunicated and interdicted by name: but if before death they be contrite, their bodies being absolved by due authority, they can receive the Christian burial.

4. As regards sin. Those who die without repentance in public sin are to be refused Christian burial. Among them are :

(1) Public sinners, such as blasphemers, those guilty of rape, prostitutes and their keepers, usurers.

(2) Those who, unless in madness, inflict death on themselves and die without signs of repentance.

(3) Those dying in duel or from a wound received in a duel are to be refused Christian burial, although they repent and receive absolution from sin and censure.

(4) Regulars of either sex who die in possession of *peculium* (as proprietors, not as guardians) without the leave of their superiors.

5. In all cases of refusing Christian burial the case has to be laid, if possible, before the ordinary, who will judge whether the case be certain or doubtful.

6. If ecclesiastical burial cannot be denied *sine gravi incommodo* there is no fault in burying the dead with Catholic rites provided these be not extorted in contempt of the Church, and also provided that no Masonic signs be attached to the bier or carried as standards.

Pius IX.  
24 Oct.  
1865

7. As regards CREMATION and CEMETERY see under these titles.

## CHRISTIAN DOCTRINE

1. Christian Doctrine is the Word of God revealed by Jesus Christ to the Church and received by her in all its fulness, guarded by her in all its integrity, and taught by her through the bishops in communion with the Pope, who, as the successor of St. Peter, is the centre of unity and the Vicar of Christ.

2. The first duty of bishops is to instruct their flocks in the faith and precepts of the Church, and the first duty of a parish priest is to do the same. Benedict XIV. says :

‘Christian Doctrine is to be taught to the faithful people by bishops, parish priests, and others having the cure of souls.’

Instit.  
tit. x.

3. The Council of Trent orders that bishops shall see that at least on Sundays and festivals, the children in each parish shall be instructed in the principles of faith and in the duty they owe to God and to their parents. If necessary, censures can be used to force those whose duty it is to acquit themselves faithfully.

Cf. Sess.  
xxiv. c. 4,  
d. r. Holy  
Office,  
1697

4. A parish priest is bound to refuse to marry those who are ignorant of Christian Doctrine, and he should not proceed to the proclamation of banns if he finds them insufficiently instructed in the rudiments of faith. But Craisson remarks that the execution of this law is often very difficult.

5. Pius X. *f.r.* issued 15 April, 1905, an Encyclical letter *On*

*the Teaching of Christian Doctrine*, and in this letter for the sake 'of introducing uniformity everywhere in the most weighty matter' he, by his supreme authority, enacted and strictly ordained 'that in all dioceses the following precepts be observed.'

(1) 'All parish priests, and, in general, all those who have the care of souls, shall, on every Sunday and feast day throughout the year without exception, give boys and girls an hour's instruction from the Catechism on those things which everyone must believe and do in order to be saved.

(2) 'At stated times during the year, they shall prepare boys and girls by continued instruction, lasting several days, to receive the sacraments of Penance and Confirmation.

(3) 'They shall likewise and with special care, on all the weekdays of Lent, and if necessary on other days after the feast of Easter prepare boys and girls, by suitable instruction and exhortations, to make their first communion in a holy manner.

(4) 'In each and every parish the society commonly called the Confraternity of Christian Doctrine shall be canonically erected. Through this the parish priests, especially in places where there is a scarcity of priests, will have lay-helpers for the catechetical instruction in pious lay-persons who will devote themselves to this office of teaching, moved by zeal for the glory of God and by the desire of gaining the numerous indulgences granted by the Sovereign Pontiffs.

(5) 'In large towns, and especially in those which contain universities, colleges, and grammar schools, religious classes shall be founded to teach the truths of faith and the practice of Christian life to the young people who frequent those public schools wherein no mention is made of religion.

(6) 'Considering, too, that, especially in these days, adults not less than the young stand in need of religious instruction, all parish priests and others having the care of souls, in addition to the usual homily on the Gospel delivered at the parochial mass on all days of obligation, shall explain the Catechism for the faithful in an easy style, suited to the intelligence of their hearers, at such time of the day as they may deem most convenient for the people, but not during the hour in which the children are taught. In this instruction they shall make use of the Catechism of the Council of Trent; and they shall so order it that the whole matter of the Creed, the Sacraments, the Decalogue, the Lord's Prayer, and the Precepts of the Church shall be treated in the space of four or five years.'

## 6. The First Provincial Council of Westminster decreed :

(1) ' In these schools (*parochial*) the Christian Doctrine, that is, the Catechism duly approved, should be taught to all Catholic children ; nor should the pastor so far make over this duty to others, however good or religious they may be, as not to visit the schools frequently and instil into the tender minds of youth the principles of true faith and piety.

(2) ' Besides having Catechism taught every day in school, there shall also, on every Sunday, be a public catechetical instruction in the church, in which the mysteries of the faith and the commandments of God and the Church and the doctrine of the sacraments shall be explained in a plain and clear manner. Moreover, where the priest accommodates his language to the understanding of little ones he should speak so as not to be too tedious to those well instructed ; on the contrary, by his weighty words, and by aptly illustrating his discourse with numerous appropriate texts of Holy Scripture, and by the examples of the saints he should attract even adults to listen and to learn.

I. West.  
viii. 1, 3

*Ibid.*  
xxv. 9

(3) ' He should establish among his flock whatever is calculated to foster piety ; he should open both day and Sunday schools and also evening or what are called night schools ; he should found a confraternity of Christian Doctrine, and he should frequently visit his schools.

*Ibid.* xviii.  
n. 11

(4) ' The Confraternity of Christian Doctrine should, according to the First Provincial Council of Milan, be established (with the Confraternity of the Blessed Sacrament) in every congregation prior to all others.'

## CHURCH

1. Here the word ' church ' is taken as only meaning the material sacred building.

2. There are various kinds of churches recognised in law :

(1) Basilicas (*q.v.*).

(2) Cathedrals (*q.v.*).

(3) Collegiate churches, which have a chapter of clerics and a common seal.

(4) Minster, which belongs to a monastery.

(5) Mother churches, which have other churches in some way subject to them.

(6) Daughter churches, which in some way depend upon other churches.

(7) Baptismal churches, which have fonts.

(8) Parochial churches, which have a parish priest (*q.v.*) attached.

(9) Missionary rectory, which is ruled by a permanent rector.

(10) Mission church, which is ruled by a removable rector.

3. Before a church can be built four things are required :

(1) The consent of the bishop.

(2) The examination of the site and setting up of the cross by the bishop together with the laying of the foundation-stone.

Reiffen-  
stuel,  
lib. iii.  
tit. 40, n. 5

(3) A sufficient revenue for lights, vestments, fabric, ministers, &c. The ordinary has to demand this revenue, but in estimating this account may be taken of the offerings and alms that may lawfully be expected.

(4) That it should not be to the prejudice of another church, especially of a parochial one.

4. For reparations (*q.v.*) the special customs of places have to be observed.

(1) When there are none, the reparations should be made out of the income of the church.

(2) If it has none or not sufficient, if it be a parochial church, then the *onus* falls on the parish priest out of the superfluities of his benefice (*q.v.*).

(3) If it be not a parish church all those holding benefices therein are obliged to make the reparations, also, out of the superfluities of their benefices.

(4) If the church have no income and the *beneficiarii* have only what is necessary for their due support, or if their superfluities be not sufficient for making the repairs, then the patron and parishioners are bound to do them, as they benefit by the church.

(5) As regards the cathedral, the repairs belong to the bishop if he have a superfluous income, and there be no adverse lawful custom. If he cannot, then it falls upon the chapter if the canons have such an income. Failing these, the bishop, together with the chapter, can compel the lower clergy to contribute out of their superfluities, or the income of vacant benefices towards that purpose can be sequestrated.

(6) What is said here of churches applies also to all buildings connected with them, *e.g.* to the bishop's house, the presbyteries, &c.

5. Hence the income of the church should be quite separate from the benefices of the clergy attending that church. The income is meant for the support of the church itself and to meet the necessary

expenditures of divine worship; the benefice (*q.v.*) is for the support, honest and fitting, of the clergy.

6. The Westminster Councils decree :

(1) 'He (the incumbent) must be careful to keep in good repair all sacred edifices, schools and presbyteries, and all appurtenances of the church. There should be no change, either by way of addition or alienation, or any material alterations of church property undertaken by him without consulting the bishop. I. West. xxv. 4

(2) 'Whenever a church or school or any other building intended for religious purposes is erected or provided, either wholly or in part from money contributed by the faithful or granted by any society administering the alms of pious Catholics, every edifice of this kind is to be considered as belonging for ever to the place where it stands. II. West. viii. 4

(3) 'Much less is it lawful for any cleric, or even for the bishop himself, to alienate Church property, as is evident from almost numberless decrees of canon law. If, however, on account of reasons approved of by the canons, such an alienation becomes necessary, the priest can never act in this matter without the authority of the bishop, nor the bishop without the precautions required by canon law. Ibid. 8

(4) 'All buildings belonging to a mission should be insured against fire by an annual payment to some insurance company.' Ibid. 20

## CHURCHWARDENS

*See under FABRIC*

## CITATION

1. A citation is a summons, *i.e.* a judicial act by which a person is called by order of the judge to appear for judgment at a certain time and place.

2. Only ordinary judges or delegates of the Holy See can issue citations.

3. The citation, except in the case of accusation, can only be issued after a preliminary summary investigation has shown that there is proof, either full or imperfect, of the guilt of the one cited.

4. Citations are :

(1) Verbal: that is, when the judge sends a messenger or official to the accused to warn him, either by word or letter, that upon a

certain day he is summoned to attend the court for trial. This citation may be sent by post. It may be served in a private manner or it may be publicly announced. But care for the reputation of an unconvicted man will always use the private citation except there be no other means of reaching him.

(2) Simple : that is, containing no threat in cases of refusal to delay obedience. To neglect such a citation does not, in common law, make one contumacious unless the citation has been repeated three times.

(3) Peremptory : that is, when at the discretion of the judge the person is warned that he will incur contumacy (*q.v.*) unless he appears without further notice on the day appointed. A sufficient period, generally thirty days, must be allowed for the accused to enter an appearance ; and, if the time granted be thought too short, an appeal lies to the higher court.

5. When the accused is out of the territory of the judge he can be cited by letter or messenger, or by the judge of the place where he is, or by a public notification.

6. Citation of an absent person is necessary and its omission makes invalid any judicial act connected with the cause. This necessity applies not only to formal and ordinary trials, but also to informal and summary methods of procedure.

7. But there are exceptions, for instance :

- (1) Where the crime is notorious and no defence is possible.
- (2) Where the accused presents himself without citation.

8. The citation to be valid must contain certain information.

- (1) The name and surname of the judge who issues the citation.
- (2) The name of the person cited.

(3) The name of the person at whose suit the citation has been issued.

(4) The cause impending or the charges made. These should be expressed at least in a general way.

(5) The place and the hour of the trial.

These points are necessary for the purposes of defence.

9. A judge cannot validly issue a citation in *private* causes or in those which concern private utility, except he be acting at the instance of a third person. In matters, however, which concern the *public* welfare or good of the Church, the judge can *ex officio* issue citations on his own initiative.

10. For the validity of a citation there is also required :

(1) That it must be issued, directly or indirectly, by a competent judge.

(2) It must be properly executed either on the person cited or on his procurator, or left at his house, or by public notice if no other way is available. A registered letter obviates many difficulties.

(3) The act of citation, date, place, hour, and by whom should be carefully recorded, so that it may be proved in case of contumacy.

11. The effects of a legitimate citation are :

(1) The person is bound to appear unless he have a just excuse.

(2) During the proceedings nothing new can be done, and no change should be made in the *status* of the cited person which may be injurious to his interests. Thus a cleric under investigation or trial should not be deprived of his office or position during the proceedings.

(3) He has to appear before the judge who cites him.

(4) In the case of a delegated judge, it preserves his delegation even when he who delegated him is dead ; for once the citation has been issued the cause has begun.

12. An Instruction was issued by the S.C.E. et R. and confirmed 11 June, 1880, on the economic method of proceeding in the ecclesiastical courts concerning disciplinary and criminal cases of clerics. This Instruction contains the method of procedure to be observed where the formalities of the regular courts cannot be followed. In this Instruction we get the following cases concerning citation :

(1) ' When all proofs by which the fact and guilt appear are forthcoming sufficiently the accused is to be called to examination (xxi.).

(2) ' In the citation, unless prudence hinders, the accusations brought against him should be set forth fully, so that he may prepare himself to disprove them (xxii.).

(3) ' But if, from the kind of accusations or for any other cause, this cannot be done prudently, he is to be intimated in a general manner to come up for examination and to answer the accusations brought against him (xxiii.).

(4) ' If he refuse, the intimation is repeated, and a peremptory period is fixed, and at the same time he is to be warned that after that time is passed he will be proceeded against as contumacious, and indeed he is to be accounted such unless he can prove a legitimate reason for absence ' (xxiv.).

13. The Westminster Synods say, concerning the Commission I. x. 4 of Investigation, which is only held if the rector so demands, that after the preliminary inquiry the bishop ' should summon by letter the missionary rector in question to the place fixed for holding the



commission on the day appointed, and set forth in full his reasons for proceeding to deprive him, unless motives of prudence suggest otherwise. And he should warn the said rector to prepare a reply, supplemented by proofs, in writing to all that has been brought forward in the account of the case, either previously by word of mouth or at present in writing.'

*Cf.*  
*S.C.P.F.*  
*Ad Dubia*  
*S. 1*  
*Instruction*

14. (1) In America in the places where the Instruction of 1878 still obtains, the citation is not issued unless the missionary rector, after hearing clearly and previously from the bishop the causes moving to a final dejection, prefers to have his case tried by the Commission of Investigation. And it is to be noted, says Smith, 'that the citation applies not only in cases where there is question of dismissal from office, but also where (a) a censure, whether of suspension, excommunication, or interdict, or (b) a grave disciplinary correction is to be imposed.'

(2) In the United States, by the Instructions of 1878 and 1884, the simple citation twice made and disobeyed constitutes contumacy.

(3) The Instruction of 1878 says that the citation should contain the cause in full 'unless prudence forbids, as in the case of an occult crime.'

## CIVIL COURT

1. Is it forbidden for a cleric or a layman to take a cleric before the civil court? By the privilege of the *Forum* clerics have a right to be tried before the ecclesiastical courts, not only in matters which, by their nature, belong to these tribunals, but also in civil and criminal matters. But there is a difference between a right and the power of exercising it; and in the present state of society the use by clerics of the privilege of the *Forum* is no longer allowed by the civil power. As things are, while clerics have no privilege, they enjoy the civil rights of citizenship, and the State enforces her jurisdiction over them as over any other of her subjects.

2. The Constit. *Apostolicae Sedis* of 1869, in the list of excommunications *latae sententiae*, reserved to the Roman Pontiff in a special manner, has the following:

'Those who compel (*cogentes*), directly or indirectly, lay judges to drag before their tribunals ecclesiastical persons beyond the canonical arrangements (*dispositiones*); likewise those who enact laws or decrees against the liberty or rights of the Church.'

This has been wrongly taken to apply to the case of clerics or

laymen taking other clerics before the civil courts. The first part, which here alone concerns us, refers only to places where there exist Concordats (*q.v.*). Moreover, the first word *cogentes* does not refer to private individuals at all, but to legislators and others in authority; and, moreover, the individual to be compelled is the lay judge, not the cleric before the judge. D'Annibali says:

'He who summons a clerical debtor before a lay judge is not to be held as drawing him indirectly, for he does not compel the judge to bring the said cleric to court, but only that he may give judgment against *him* whom he himself took into court. They who think otherwise would fill cities with excommunications.' And Pennachi says that it must be carefully noted that:

Comment.  
in Constit.  
Apost.  
Sedis

'The censure we are treating of is not incurred in those places in which the ecclesiastical court has been *de facto* abolished, because the excommunication was launched by the Roman Pontiff against those who had forcibly brought in new laws in provinces where ecclesiastical jurisdiction was in vigour; nor can it be believed that he wished to punish with excommunication the children of the Church, who, following a custom already tolerated by her, drew all classes of persons without distinction before a lay tribunal, as countless questions would thus be raised and occasion given for distress and perplexities of conscience.'

3. From the above it is abundantly clear that as there are no ecclesiastical courts in English-speaking countries that are recognised by the State, and as there are no Concordats existing on such matters, the famous paragraph *Cogentes* does not apply in any way to such countries. See also pp. 42-3 for the teaching concerning appeals to the civil power.

4. It will be worth while to add the testimony given in public court by Cardinal Cullen and the Bishop of Galway.

(1) Cardinal Cullen said: 'In nearly every country now there are Concordats with the Holy See which expressly declare that all civil cases of the clergy, such as debts, wills, rights of property, and matters of that kind, may be decided in a civil court. In these cases a layman has nothing at all to answer for. In countries where there is no Concordat, such as this country and the United States of America, the Holy See has declared that breaches of ecclesiastical immunity are to be overlooked. Q. But are they still breaches of the law?—A. It is a breach of the law as it was; not a breach of the law as it is now brought down by custom.'

Report of  
the case of  
O'Keefe v.  
Cullen,  
p. 397

(2) In reply to the question 'According to canon law can the bishop be brought into court for money?' the Bishop of Galway

said : 'If a bishop owed money to a parish priest and did not pay it, I think it would be a very good thing to bring him into court.' And to the further question, 'But the law remains in the letter ?' he replied, 'Of course it does in the letter, but it is abolished by the Consuetude or Custom' (page 530).

5. To make this more clear the Holy Office, 23 January, 1886, says : 'Since there has often been doubt about the true sense and understanding of this chapter, this supreme Congregation of the Holy Roman and Universal Inquisition has several times (*non semel*) declared that the chapter *Cogentes* only affects lawgivers and other authorities compelling, either directly or indirectly, lay judges to drag before their tribunals ecclesiastical persons beyond the canonical arrangements (*dispositiones*).'

6. In the same decree the Holy Office says that in places where the privilege of the *Forum* has not been derogated by the Pope, if the only way of obtaining justice is to prosecute before the lay judges, everyone should first ask leave of his ordinary before taking clerics before the civil tribunal. This leave the bishop shall never deny, especially if his own efforts towards conciliation have been in vain. It is not lawful to summon bishops before the civil courts without the leave of the Apostolic See. And if anyone dare to drag before the judge or lay judges either clerics without the leave of the ordinary, or a bishop without the leave of the Holy See, it will be within the power of the ordinary, if he judge it expedient in the Lord, to threaten him, especially if he be a cleric, with penalties and censures *ferendae sententiae* as a violation of the privilege of the *Forum*.

7. On this we may remark :

(1) The leave which has to be asked from the bishop before prosecuting a cleric cannot as a rule be denied. It is therefore to be accounted as a mark of respect, and as giving the bishop the opportunity of acting as arbitrator between the conflicting parties.

(2) The same applies when the leave of the Holy See is asked. It is quite possible that, for motives of prudence, the Roman authorities may make no reply to such an application ; and their silence, after due time has been given for a reply, can be legitimately taken for consent.

(3) Menghini says on this point :

'The permission in question is merely intended to safeguard the respect and reverence due to certain persons, and should be asked only when it can be obtained conveniently, successfully, and without prejudice to one's rights. That it is not to be regarded as

a matter of strict observance is evident from the fact that, here in Rome and elsewhere, it is most readily granted when the contending parties cannot agree among themselves. Much less, then, need special importance be attached to the absence of a simple formality, when, even by canonical rule, necessity renders lawful that which is positively forbidden by the law.'

8. There are various local laws, synodal or provincial and otherwise, which must be carefully observed in such cases.

9. To conclude, the S.C.P.F. 6 September 1886 decided that a cleric who cedes his rights against another cleric to a layman is under the same obligation as if he acted directly by himself. Otherwise he is in the position of one who acts *in fraudem legis*.

10. Those who have recourse to the lay power to impede the letters or any acts emanating from the Apostolic See or from any of the legates or delegates of the same, and preventing, directly or indirectly, their promulgation or execution, or on account of these hurting or terrifying either the parties or others, incur excommunication reserved in a special manner to the Roman Pontiff. Hence those who appeal to the civil courts against the orders or decisions of the Holy See fall under the censure.

## CLANDESTINITY

1. Clandestinity is a diriment impediment (*q.v.*) imposed by the Council of Trent to preserve the sanctity of marriage.

2. The decree runs : ' Those who attempt to contract matrimony otherwise than with the presence of the parish priest or of another priest by leave of the parish priest or of the ordinary, and before two or three witnesses, the Holy Synod makes them altogether incapable of contracting, and declares such contracts null and void.'

Sess. xxiv.  
cap. i.  
*Tametsi*,  
d. 7.

3. The decree only binds in places where it was promulgated thirty days after the promulgation itself. Where it has been observed since the Council of Trent it still has force. A bishop, however, cannot now publish it, in or out of synod, without a particular faculty from the Holy See. But the principle is that wherever it was once binding, that territory, even if divided into other dioceses, is always under the law unless for a long time the observance has fallen into disuse.

4. The decree *Tametsi* is binding in all the dioceses of Ireland ; in Malta ; in Goa and its suffragan dioceses on the Malabar coasts, Pondicherry, British India ; in America, in those places that were once under Spanish or Portuguese rule ; in Trinidad ; Canada, especially in the lower parts in the city and diocese of Quebec ; the province of New Orleans, province of San Francisco, and the State of Utah, except the part to the east of the river Colorado ; Santa Fé, except the northern part of the State of Colorado ; the diocese of Indianapolis ; the city of St. Louis ; St. Genevieve, St. Ferdinand, and St. Charles in the archdiocese of St. Louis ; Kaskaskia, Cahokia, French Village, and Prairie du Rocher in the diocese of Alton ; and in the parishes of the city of Detroit.

5. The decree is not binding in England or Scotland, in the provinces of Baltimore, Philadelphia, New York, Boston, Oregon, Milwaukee, Cincinnati, except in the diocese of Indianapolis ; St. Louis, except in the city itself and the places mentioned above ; Chicago, except the places mentioned in the diocese of Alton. It is also not binding at the Cape of Good Hope, nor in the dioceses and province of Quebec, nor in Australia.

6. The presence of the parish priest of either man or woman is sufficient ; though the custom is, *ratione honestatis*, for the *parochus* of the bride to perform the ceremony. The *parochus* of the domicile or of the quasi-domicile is the one intended by the Council of Trent, not the *parochus originis*. It does not matter for the validity if the *parochus* be excommunicated, suspended, or interdicted (unless specially suspended *quoad hoc* by the Pope), or whether he have only a *titulus coloratus*. But it is commonly held that the assistance of a *parochus* who is publicly declared a heretic is not sufficient.

7. Marriage contracted before the superiors of the *parochus*, to wit, the bishop after taking possession of his see, the vicar general, the vicar capitular, is valid ; and, in case of the vicar general, even without the knowledge or against the will of the bishop.

8. The *parochus* can delegate the faculty to any priest, who, however, should know in some way, by word or writing, of the fact of delegation. But the delegated cannot subdelegate unless he be delegated *ad universitatem causarum*. Mere presumptive leave is not sufficient.

9. As regards the witnesses the number is two or three. Their mere presence, even unasked and unwilling, if simultaneous with that of the *parochus*, is sufficient. It is a moral presence that is

necessary : that is, they should be able to hear and see, or at least hear the voice of those contracting.

10. As regards domicile two days are required by law ; actual habitation with the intention of remaining. This is preserved by living in a place for ten years, except in cases where the stay only depends upon an accidental cause which, failing the residence, will be brought to an end. Domicile, however, is not lost by absence, but by the intention, expressed in words or deeds, of not returning. Quasi-domicile, on the other hand, is acquired, not by a residence of one month as some say, but by such as accompanies the intention of remaining for the greater part of a year. The month referred to by Benedict XIV. Constit. *Paucis* is sufficient for the presumption, and is not a term.

11. The Holy Office, 6 May, 1886, granted to the United States of America that those who pass from localities in which the decree *Tametsi* binds, so long as they continue in the new locality for the space of one month, may acquire a quasi-domicile for the purposes of marriage without any inquiry being made as to their intention of remaining there for the greater part of the year.

12. The S.C.C. 28 August, 1864, declared that domicile or quasi-domicile in reference to clandestine marriage has to be estimated according to canon law and not according to the provisions of the civil law.

13. When the *parochus* cannot attend without very great difficulty or grave danger in places where the decree *Tametsi* binds a marriage contracted without his presence is valid, as no one is bound to impossibilities. The grave inconvenience of the community, *e.g.* if the *parochus* cannot attend for the space of one month, but not that of the individual, is also a sufficient excuse for exemption. Ignorance or *epicheia* (*q.v.*), moreover, does not free from the obligation of a decretum *irritans*.

14. Where the decree is not published the S.C.C. 19 January, 1607, decided that marriages contracted without the observance of forms prescribed by the Council are valid. Moreover, the *sponsalia* (*q.v.*) became true matrimony *per copulam subsequutam*.

15. It must be remembered that, in itself, the decree *Tametsi* binds everyone in any place where it has been published. Hence in the island of Malta an arrangement was required to be made by the British Government and the Holy See in 1890 in order to declare that all marriages of non-Catholics taking place within the island should be regarded by the Church as valid ; while for Catholics,

even when only one party is a Catholic, the presence of the *parochus* remains necessary for the validity of the contract.

### CLAUSULAE

1. *Clausulae* are short phrases of legal weight which affect the interpretation of rescripts (*q.v.*).

2. There are certain common *clausulae* which are always inserted or at least must always be understood in every rescript, whether of grace or of justice :

(1) *Si ita est* or *Si preces veritate nitantur*. By this the *onus probandi* is put upon the one in whose favour the rescript is issued should the truth of what he says be questioned.

*Cf. Rule  
xviii. of  
the Roman  
Chancery*

(2) *Salvo iure alterius*. The Pope is not considered to derogate from the rights of others unless he clearly expresses his intention.

3. Some of the general rules of interpretation of *clausulae* are as follows :

(1) A general antecedent phrase is explained by a special subsequent one if this be clear ; but if this be doubtful it does not restrict the general antecedent.

(2) A general subsequent clause is explained by a special antecedent one.

(3) A universal clause comprehends all. It amplifies the meaning of words to which it is joined ; and it allows of no exception.

(4) Accessory clauses joined to a *contractus simulatus* are to be judged to be of the same nature.

(5) A clause derogatory of any law so far derogates therefrom as far as it conflicts with it.

(6) A clause appended to the first commission is held to be repeated in the second if the first one still remains in force ; but not so if it be revoked.

(7) A preservative clause gives *de novo* no *ius*, but only preserves existing laws.

4. The force of some of the more general *clausulae* in Apostolic documents must be mentioned.

(1) *Motu proprio* and *ex certa scientia* and *de plenitudine potestatis* remove subreption (*q.v.*). Except :

(a) If a false cause be expressed either by the petitioner or by the Pope.

(b) If there be silence about the inhability of the person.

(c) If it be to the prejudice of a third party.

(2) *Supplentes* only refers to expressed defects of positive law, not of natural or divine law. It does not supply defects of cause, nor of the doer of the act, nor to prejudice of a third unknown to the grantor, nor defects of the person asking; but it only refers to the *solemnia iuris*.

(3) *Usque ad beneplacitum nostrum*. A rescript with this clause expires at the death of the grantor; but Bouix holds that in episcopal rescripts in favour of regulars the grant remains. De Regul.  
II. p. 249

(4) *Usque ad beneplacitum S. Sedis*. With this clause a rescript does not cease with the life of the grantor; for the Holy See never dies.

(5) *Donec revocatur*. The rescript remains in force after the death of the grantor; for death is not revocation.

(6) *Omni appellatione remota* only takes away the *suspensive* not the *devolutive* effect of an appeal.

(7) *Et amplius* signifies that the cause not only is rejected, but that it must not be brought forward again, though it is left to the discretion of the cardinal prefect, who signs the rescript, to remove the prohibition.

(8) *Dummodo sit occultum* is a clause used in documents coming from the Sacred Penitentiary. A matter is said to be hidden if in a city only seven or eight persons knew of it; in towns, if five or six. Fagnanus holds that a matter is occult which in no way can be proved.

(9) *Audita prius sacramentali confessione* means that a confession is necessary before a dispensation (*q.v.*) be executed.

(10) *Sublata occasione peccandi* refers to voluntary occasions. Or if the circumstances be necessary, means must be taken to make remote what at present is a proximate occasion.

(11) *Iniuncta ei gravi poenitentia*: that is, according to the capacity of the penitent, *e.g.* a weekly fast for six months, or the rosary three times a week.

(12) *Praesentibus laceratis sub poena excommunicationis latae sententiae*. That is to say, within three days of the execution if the marriage be already contracted; but if not, the parish priest must either keep the document (unless there is a clause also covering this contingency) or make a note thereof in some secret place, so in case the impediment become public the fact of the dispensation could be proved.



### CLEMENTINA

1. The collection of decrees called the *Clementina* is part of the *Corpus Iuris Canonici*, and is due to Pope Clement V., the first of the Avignon Popes. In a consistory (21 March, 1314) he published the decrees of the Council of Vienne, together with others. They were in process of revision when Clement died; and John XXII. published the collection as part of the canon law, calling it the Clementine Constitutions, and by the Constit. *Quoniam nulla* [25 October, 1317] declared it to be genuine and authentic.

2. The collection is divided into five books which are subdivided into titles and chapters, or Clementines.

3. One method of quoting from this collection is the same as for the decretals, with the addition of *in Clem.*, e.g. Cap. *Eos qui De Consang. et Affin. in Clem.*; or Clem. *Eos qui De Consang. et Affin.*

### CLERIC

1. Clerics are so called because they are *de sorte Domini* (Gr. κληρος). Hence they are described as Christian men who, removed from secular cares and business, are specially devoted to the divine worship or service; also all those who serve Christ in the Church.

2. Cleric is a generic term, and in *favorabilibus* includes monks and nuns. In *odiosis* it refers only to the lower order of clergy, and does not include canons, prelates, or dignitaries unless these be expressed or implied.

3. Clerics have certain obligations, which are divided into two classes, viz.:

- (1) Those regarding external appearance.
- (2) Those regarding the manner of life.

4. External appearance. Clerics by common law are obliged to wear:

- (1) The tonsure, which is the sign of clerical initiation.
- (2) The habit according to the approved custom of the country.
- (3) And, in the present discipline of the Latin Church, to shave the face.

N.B.—Those who are only tonsured or in minor orders and have no benefices are not obliged to wear the dress and tonsure, except they wish to enjoy the privileges of their state.

5. Manner of life. Clerics by common law are forbidden:

(1) To cohabit with persons of the other sex, except so far as the law or legitimate custom allows.

(2) To indulge in drinking bouts and feastings. Hence they are forbidden to go into taverns except *ex necessitate*, e.g. on a journey.

(3) To indulge in profane spectacles, dances, or immoderate gaming.

(4) To take part in unlawful hunting, especially such as distract a cleric too much from his sacred ministry, or which are repugnant to the gravity and holiness which become the ecclesiastical state.

(5) To practise the lower arts, e.g. to act as or to be a domestic servant to a layman.

(6) To carry arms without a just cause.

(7) To undertake political or secular offices or business, excepting in cases such as being a senator or privy councillor.

(8) To trade either directly or through others.

(9) To practise medicine or surgery, especially when operations are necessary.

S.C.P.F.  
4 Dec.  
1872

(10) To serve as a soldier, lawyer in the civil courts, tutor, or trustee.

N.B.—The above prohibitions become more binding the higher the grade of the clerics, e.g. business is forbidden to those in sacred orders and to all holding benefices, but not to those in minor orders.

6. Clerics are also obliged by common law :

(1) To exercise their respective orders relating to custom.

(2) To serve their church.

(3) To observe celibacy (*q.v.*). This refers at least to those in sacred orders.

(4) To recite the divine office if beneficed. By custom this same obligation is imposed upon all clerics in sacred orders.

7. The privileges of clerics are two, viz. :

(1) The privilege of the Forum, which exempts them from all power and jurisdiction of the secular courts. Though this privilege, in its entirety, no longer obtains in English-speaking countries in civil and criminal matters, it is still necessary for the Church to take cognisance of the causes of clerics.

(2) The privilege of the Canon, which excommunicates *ipso facto* all who, by the persuasion of the devil, set hands on, or use force to, a cleric.

II. Lat-  
ran,  
can. 15

8. The conditions attached to the privileges of the Forum are :

- (1) Holding a benefice.
- (2) Wearing the habit and tonsure.
- (3) Serving some church or attending a university, school, or seminary, with the bishop's leave, on the way to the greater orders.

9. In the case of a married cleric the conditions are :

- (1) That he must only be married once and to a virgin.
- (2) That he must use both habit and tonsure.
- (3) And must serve some church at the appointment of the bishop.

10. In the relation of clerics to the bishop there must be noted :

(1) They cannot be obliged by the bishop to undertake duties not expressed in the law.

(2) Priests, having neither office nor benefice in a cathedral church, cannot be obliged by the bishop to fulfil the duties belonging to such office or benefice.

(3) Those who are not confessors cannot be obliged to attend conference.

(4) A beneficed cleric is not obliged to accept any further burthens than those set down by the benefactor or imposed by the sacred canons. The bishop cannot change in any way the will of the testator ; neither can he, with the consent of the heirs, impose any new burthen on the benefice.

(5) Unbeneficed clerics are not obliged to give to the subsidy *caritatis* (*q.v.*).

(6) Clerics can by common law pass to religion without asking the leave of the bishop, and even against his will.

(7) Clerics are bound, like laymen, to give canonical obedience (*q.v.*) to their bishop.

(8) They cannot leave the diocese for pilgrimage or recreation without his leave.

11. Secular clerics and regulars living out of the monastery cannot set up a stable domicile in Rome without the express leave of the Pope, to be asked through the S.C.C.

12. No cleric can be elected to any office that requires residence in Rome except he has, besides the letter commendatory of his bishop, the leave of the Pope ; and no benefice can be validly conferred upon him without the leave of his ordinary.

13. Those who go to Rome for study, or business, or just cause, with the leave of their ordinary, have to return to their diocese immediately the reason for their absence is past or when they are recalled.

14. Clerics who come to Rome with the leave of their ordinaries either to study or to follow the course of the Congregations, have to live either in the college belonging to their nation or in some other ecclesiastical college. No cleric can be received as a student in any establishment unless at the request of his ordinary, who must also undertake to receive him back after the studies are completed, or when for any cause the superiors dismiss him. And no cleric can be received as an ordinary student at the Gregorian, Dominican, Roman, Vatican, or Propaganda colleges or seminaries who has not a proof in writing that he is a convictor in some ecclesiastical college or seminary.

Pius X.  
Apostolic  
letter,  
1904

15. Those who are ordained on the title of the mission are in virtue of the oath precluded from entering any religious order without the leave of the Holy See.

S.C.P.F.  
27 April,  
1871

16. The particular law of Westminster declares :

(1) 'Those about to be ordained must be examined strictly by examiners on the order they are about to receive. Those to be promoted to the tonsure and minor orders must be examined in literature ; those about to receive the subdiaconate, in one treatise of sacred theology ; those about to be advanced to the diaconate, in two treatises ; and those to be raised to the priesthood, in three treatises at least, or, if it seem proper, in the whole of dogmatic theology. If practical, there should also be made beforehand proclamations of those to be ordained.'

I. West.  
xxi. 3

(2) 'As far as possible the interstices should be observed, so that each one, before he ascend to a higher order, may have frequently the opportunity of exercising the order already received, and thus maturely he may learn the rubrics.'

*Ibid.* 4

(3) 'As to the decent maintenance of a cleric promoted to the subdiaconate under the title of patrimony, the fathers consider that no one who has not a legally sure income of at least £40 sterling ought to be ordained. On this matter the *Institution XXVI.* of Benedict XIV. and the rules there laid down should be attended to.'

*Ibid.* 5

(4) 'But those ordained under the title (*q.v.*) of patrimony should understand that they are not at liberty to leave their own diocese without the consent of the bishop to whom at their ordination they promised reverence and obedience. For, as Benedict XIV., *Const. xxv., Ex quo dilectus*, says, "this solemn promise of obedience and reverence we do not consider a mere empty form . . . nay, we freely acknowledge that a priest, by virtue of this promise, is bound, among other obligations, not to quit the service of the

*Ibid.*

Church to which he belongs by his ordination without leave of his bishop."

xxiv. 1.

(5) 'priests keep away from all spectacles unworthy of an ecclesiastic, from clamorous hunting with horse and hounds, from public dances, from unlawful games, and from feastings protracted to a late hour of the night.

IV. West.  
xi. 9

(6) 'We strictly forbid clerics in holy orders to be present at stage plays in public theatres or in places temporarily made use of as public theatres; and impose on all who transgress this command the penalty of suspension, to be incurred *ipso facto* and reserved to the respective ordinary, according to a regulation which has been in force in England up to this time.'

*Ibid.* 2

(7) 'The beauty of cleanliness with simplicity should shine forth in the houses of priests; and nothing in their furniture or ornaments should savour of luxury or worldliness. No ludicrous and foolish pictures, or such as are unbecoming to a priest, should be seen there; but in each room there should be an image of our Lord crucified, or of the most holy Mother of God, or of the saints, or pictures illustrating the life of our Saviour, or sacred history.

*Ibid.* 3

(8) 'In compliance with the injunctions of the canons, the female domestics of priests should be advanced in years, and known for their modesty, prudence, and blameless lives.

I. West.  
xxiv. 5, 6

(9) 'The dress of ecclesiastics ought to distinguish them from laymen, but not confound them with heterodox ministers. It should be black or of a dark shade; and they should not, under pretext of travelling, return to the ignominy of the secular habit from which they have been freed. As to the shape, we recommend that which recently has been begun to be used by secular priests. At home their most becoming dress is the cassock (or, if they prefer it, what is called the *zimarra*), with the biretta. But as the distinguishing badge of the Catholic clergy, in nearly all parts of the world, is what is known as the *Roman collar*, and as it is now recognised as such, even by Protestants, without provoking injury or insult, we desire it to be worn by all priests when exercising their sacred ministry unless, considering the state of things, the bishops, at their discretion, may for a time determine otherwise. And for greater decency in divine worship, and also for greater uniformity in the sacred service, we order that all secular priests and also regulars who do not wear the distinctive habit of their order shall, as often as they celebrate Mass in public

<sup>1</sup> This prohibition was first issued in England by Archpriest Harrison (1615-21) because three of his clergy went to the theatre.

or preach the Word of God, or clad in sacred vestments officiate or assist at any office in church, appear in the same collar so worn that no shirt appears about the neck.

(10) 'We order that every priest shall wear the Roman collar, not merely whilst he is fulfilling his sacred duty, but at all times, in order that he may be recognised by all as a priest. We desire, likewise, that the custom in vogue amongst ecclesiastics in Rome of not wearing whiskers or beard should be strictly followed. And if a priest so completely lay aside the clerical dress, unless in some very rare case approved of by the ordinary, that he can be no longer recognised by everybody as belonging to the clergy of this province, and be an object of suspicion to the faithful, or of notable scandal, he should not be allowed to say Mass nor to assist in the sanctuary at the divine offices.

IV. West.  
xi. 13, 14

(11) 'As the fervour of devotion easily cools down, and, as St. Leo observes, even pious souls become sullied with the dust of the world, each priest should, at least every two years, attend the spiritual exercises which the bishop will provide.

I. West.  
xxiv. 7

(12) 'Since no man being a soldier to God entangleth himself in secular business, it is our will that no priest exercise a trade or engage in anything savouring of trade, or in occupations pursued for mere gain. Likewise let no priest undertake the office of guardian or executor without the leave of the bishop.

2 Tim. ii. 4

*Ibid.* 9

(13) 'Priests who have entered on the duties of the sacred ministry must not on that account bid farewell to study, especially sacred studies; but, inasmuch as from the lips of the priest the people have to seek knowledge, let them be assiduous in reading the Holy Scriptures and in studying theology, dogmatic, moral as well as ascetical. Thus it will be in instructing their flocks they will not merely fill their ears with empty words, they will not fight with adversaries as men beating the air, but they will nourish those effectually with the true bread of life, and will put to flight these with solid reasoning. Priests should refrain also from the harmful reading of books that treat of frivolous and worldly subjects; for such reading consumes their time and energy to no purpose, and easily opens the door to temptations.

Malachi  
ii. 7

*Ibid.* 10

(14) 'It is expedient that faculties, excepting those granted to missionary rectors, should be limited as to time, so that at first they may be given for a year, and so gradually for longer periods. But all priests should bear in mind that the bishops have a right, and it is one exercised in many places and most highly

*Ibid.* 11

recommended by Benedict XIV., to subject priests again to examination, especially the junior ones, before they renew their faculties. If priests will in this way persevere in sacred studies and in reading the Word of God, they will find the wisdom that sitteth by the throne of God meeting them in this sacred ministry as an honourable mother.

Eccl.  
xv. 2

(15) 'But since both we and our words and all wisdom, and the knowledge and skill of works are in the hands of God, let us therefore invoke Him that the Spirit of wisdom may come upon us. On this account a priest ought frequently to devote himself to prayer to obtain this gift which comes down from the Father of light. He should daily practise meditation, strive to say the divine office devoutly, make a visit at least once a day to the sacrament of the most holy Eucharist, and honour with signal devotion the Blessed Virgin Mary.

Wisdom  
vii. 16

*Ibid.* 12

(16) 'Priests ordained on the title of the mission who receive stipends from any church or oratory; those who have care of souls; those who preside over churches or public oratories, unless they are able to prove a special exemption,' have to pay the yearly *cathedraticum*.

III. West.  
xvii. 2

(17) 'The priest should say Mass at an appointed time; and although he should be always ready to hear confessions, he should especially be at hand in the confessional or at least in the church on the days and at the hours given out, lest through lack of order and method scandal and loss of souls may arise. Preserve order, and order will preserve you.

IV. West.  
xi. 2

(18) 'Women should not live in a priest's house without leave of the ordinary. Schoolmistresses, also, and pupil-teachers should be strictly forbidden even to live in any presbytery with the priest unless for some reason known to the bishop and approved of by him in writing; for these, being by their intelligence and education more refined, are more exposed to the tongues of calumniators . . . and therefore priests should beware of certain women who, by their domineering ways, their contempt for Christ's poor, and their mischief-making spirit, become real plagues in a mission. Moreover we forbid the clergy to allow schoolmistresses, pupil-teachers, or their own servants to sit down with them at table.

*Ibid.* 3

(19) 'No priest should reside in a rented or in a private house without the previous permission of the bishop.

*Ibid.* 4

(20) 'The common table in presbyteries is the mark and sign of fraternal charity; and absence from it lessens this, yea, if frequent, completely banishes it. Rarely, therefore, should they take

meals elsewhere, much less habitually. Having food and raiment *Ibid.* 7 let us with these be content.

(21) 'They should not too readily or too frequently betake themselves to places of public resort and amusement, even though of an innocent nature, lest uselessly wasting their time they become suspected of a want of the sacerdotal spirit. They should at night time be back early at the presbytery unless the call of duty or of charity demand otherwise. *Ibid.* 10

(22) 'Priests should check the abuse which is springing up in some places of getting up dances for the purpose of making money for schools or for other good works. *Ibid.* 11.

(23) 'Not to appear to act too harshly in matters of themselves innocent, we advise the pastors of souls to refrain from getting up excursions without the permission of the vicar general. *Ibid.* 11

(24) 'Priests to whom the exercise of their ministry has been forbidden by the sentence of the ordinary have no claim upon him for support, since by their own fault they have rendered themselves incapable of working in the missions. However, before sentence of deprivation of this kind be pronounced the accused should be admonished; and should he not improve, the same process should be followed in his case as . . . prescribed previous to the final rejection of a missionary rector.' *IV. West. xii. 8*

17. The Maynooth Synod of 1875 decrees :

(1) That clerics should altogether abstain from horse racing, hunting with dogs and horses, public theatres, operas, and exercises under penalty of incurring *ipso facto* suspension. *n. 118*

(2) The dress is always to be black or dark, and of such a fashion as will easily distinguish a cleric from a layman. The Roman collar is always to be worn, and indoors the cassock. *n. 123*

## COADJUTOR

1. A coadjutor is one given by lawful authority to a prelate or to a beneficiary to aid him in fulfilling the duties of his office.

2. There are three kinds of coadjutors :

(1) Temporal and revocable.

(2) Perpetual and irrevocable.

(3) Perpetual, with the right of future succession.

3. As regards temporal coadjutors. Since a cleric who enjoys a benefice cannot be deprived of it on account of old age or infirmity, it is fitting that he should have someone to assist him in the work. This substitute or coadjutor has a claim in justice to share



Sess. xxi.  
cap. 6, *d.r.*

the fruits of the benefice in a reasonable proportion. The sacred canons only speak of parochial churches; and the Council of Trent orders the bishops, as delegates of the Holy See, to provide parish priests, who are ignorant but of good life, with coadjutors and vicars, and to assign these a sufficient share of the fruits of the benefice. As regards benefices without cure of souls, it is not the custom to give these temporary coadjutors, as the end in view can be attained by other means.

Sess. xxv.  
cap. 7, *d.r.*

4. As regards perpetual coadjutors. The Council of Trent forbids absolutely perpetual coadjutors except for bishops and abbats, and this only under the conditions—viz. (1) that the necessity is pressing and the utility evident; (2) and that the coadjutorship be not given with the hope of future succession.

5. As regards perpetual coadjutors with right of succession, the cause must first be diligently taken cognisance of by the Roman Pontiff.

6. During the lifetime of the beneficiary the coadjutor has only, as regards the benefice, a *ius ad rem* and not a *ius in re*.

### COADJUTOR BISHOP

1. A coadjutor bishop is a titular bishop who is appointed by the proper authority to assist an ordinary bishop in the administration of the diocese.

2. Here he differs from an auxiliary bishop (*q.v.*).

3. There are several kinds of coadjutors.

(1) By reason of the duties assigned there are:

(a) Temporal coadjutors, who only assist the bishop in the temporal administration of the diocese.

(b) Spiritual coadjutors, who assist him in his spiritual duties of order and jurisdiction.

(c) Temporal and spiritual coadjutors, who assist him in all the work of the diocese.

(2) By reason of the tenure of the office there are:

(a) Temporary coadjutors, whose duties cease when the necessity for their help no longer exists.

(b) Permanent coadjutors, who have the right of succession when the ordinary dies, resigns, or is translated. These last are called *coadjutores cum iure successionis*, and they are not generally appointed by the Holy See unless there be urgent necessity or evident reason.

4. The appointment of a coadjutor with right of succession

follows the same rule as that of a residential bishop ; and in certain cases a bishop who is unable to discharge his own duties may, by Papal licences, and with the consent of his chapter or of the diocesan counsellors, choose a temporary coadjutor. In case the bishop becomes insane the chapter, by a two-thirds majority, may appoint such a temporary coadjutor until the Holy See provides.

5. The causes which make the appointment of coadjutor advisable or necessary are :

- (1) Chronic or incurable disease on the part of the ordinary.
- (2) Old age.
- (3) Insanity.
- (4) Negligence.

6. The Holy See can for a just cause appoint a coadjutor to a bishop who is unwilling to have one.

7. The rights of a coadjutor depend upon the letters apostolic appointing him. In case of doubt the reasons which carried the appointment will be sufficient to determine the powers. Thus, in case of an insane bishop, the coadjutor, whether temporary or with right of succession, has full powers of administration, both spiritual and temporal. But he cannot alienate ecclesiastical property. Then, in case of a bishop who is only infirm, the coadjutor can do only what the bishop is willing to leave in his hand. He should act with the advice and consent of the diocesan unless the bishop objects unreasonably to the service of the coadjutor's powers ; then the more prudent course is to refer the matter to the Holy See.

8. The coadjutor has a right to a salary from the bishop, and his income should come from the *mensa* of the bishop if it be large enough. But the Holy See in appointing a coadjutor usually fixes the amount of the salary and the source whence it is to be derived.

9. The coadjutor should, if possible, have his residence in the bishop's house.

10. A coadjutor *cum iure successionis* becomes diocesan bishop as soon as the see is vacant in the ordinary course. Before entering upon possession he must, unless he has already done so on his appointment, show to the chapter or the diocesan counsellors the apostolical letters giving him the right of succession.

11. According to the Second Council of Baltimore, bishops of America who hold Church property in their own name should leave the perpetual coadjutor in their will as the legal heir.

12. The ceremonial privileges of a coadjutor are the same as an auxiliary bishop so far as the outer manifestation of ecclesiastical honours is concerned. Hence he does not use the throne nor the pastoral staff.

## COERCIVE POWER

1. The Church has the right to use coercive powers which are a necessary corollary of the public power of lawgiving, judging, and of executing the penalties decreed upon transgressors.

2. A society which is perfect must possess coercive power for attaining the end for which the society itself exists.

3. Hence the Church has :

(1) The power of prevention in its threefold aspects of prevention from attack, defence from aggression, and restoration after an injury has been done.

(2) The right of censure.

4. The Church, therefore, can as far as is necessary make use of :

(1) Temporal punishments.

(2) Spiritual punishments.

(3) Mixed punishments.

5. The Council of Trent says :

Sess. vii.  
*De Baptismo*,  
can. 14

‘If anyone says that the baptized are not to be compelled to a Christian life by any other penalty save that they be excluded from the participation of the Eucharist and of the other sacraments until they repent, let him be anathema.’

6. Pius VI. *Constit. Auctorem fidei* in condemning the fourth proposition of Pistoia claims the coercive power of exterior judgment and of inflicting healthful penalties.

Syllabus,  
n. 24

7. Pius IX., in the Encyclical *Quanta cura* 1864, condemned the doctrine that the Church had no right to coerce with penalties the violation of her laws ; and he also condemned the proposition that the Church had no power of inflicting punishment nor any temporal power, direct or indirect.

8. The power of the Church is clear, although the practice has varied according to necessity. Among her temporal punishments may be mentioned :

(1) The infliction of infamy which closes the way to ecclesiastical dignities.

*Cf.* Trent,  
Sess. xxv.  
cap. 3, *d.r.*

(2) Pecuniary fines to be applied to pious uses.

(3) Exile.

(4) Imprisonment, which is generally reclusion in a monastery.

(5) Stripes and fastings. But she does not make use of capital punishment, nor mutilation, nor the more atrocious penalties.

9. The right to use coercive power *per se* must be ever claimed for the Church ; but not every use of this power. What may lawfully be done under certain circumstances would be most unwise

and prejudicial to the Church's end were it done under conditions totally different.

## COGENTES

*See under* CIVIL COURT and CENSURE

## COLLATION

1. Collation is the concession of a vacant benefice by one who has the power.

2. There are two kinds of collation, viz. :

(1) Necessary, *i.e.* which is made by legal necessity, *e.g.* on account of a presentation or election, or at the command of a superior, or through a permutation of benefices.

(2) Free, *i.e.* which is made by the sole right of the prelate ; and, therefore, is a gratuitous concession of a benefice.

3. Collation differs from election (*q.v.*) especially in this respect. By collation the *ius in re* is acquired, while by election there is only acquired the *ius ad rem*.

4. The provision by the Pope has the force of election and confirmation, which latter, like institution also, is of the force of collation.

5. Collation is necessary for the validity of possession of a benefice according to rule : 'An ecclesiastical benefice cannot be lawfully obtained without canonical institution.' He who takes possession of a benefice without collation is an intruder, and *ipso facto* is deprived of any right, and, moreover, is liable to most grievous penalties.

cap. 1 de  
Regulis  
iuris in  
Sexta

6. The Pope is the chief collator, and he reserves to himself the greater benefices, and all others falling vacant in certain months and under certain circumstances. Thus he collates to episcopal sees, to certain high prelacies, to the dignities of chapters, to all vacant canonries in the alternate months (*q.v.*), and to any benefices which fall vacant by death *in curia*, which is understood as including any place within forty miles of Rome.

7. Other benefices not claimed by the Holy See, and over which no one else can prove a claim, fall to the bishop of the diocese as collator.

8. There are some who, by indirect or lawful custom, at least by delegated right, may collate to benefices or offices.

Soglia,  
*Institu-  
tiones  
Iur. priv.*  
93

9. The collation to vacant canonries and prebendaries of the cathedral belong *regulariter* to the bishop together with the chapter.

Bouix, *De  
Capitulo*,  
p. 224

*Ibid.*  
pp. 249-  
256

10. The nomination of a perpetual vicar attached to the cathedral with cure of souls belongs to the chapter; but the approbation belongs to the bishop.

*Cf. Cap.  
Nulla, 2,  
De Conc.  
Præb.*

11. The Third Lateran decreed that whenever a prebend or an office in any church became vacant, it should not remain long *in suspensio*; but within six months it should be collated on a worthy person. If bishops neglect this, the metropolitan shall dispose of the vacancy as he judges best.

*Cf. Soglia.  
op. cit.  
96*

12. The collation being a formal act, it must be done either by the bishop in person or by his delegate, and a notary should draw up the deed, which should be witnessed by two competent persons. Possession of the collated benefice may be taken either by the beneficiary or by his procurator, and all the customary forms of taking possession, whatever they may be, should be duly carried out.

13. If the collation to a benefice be null and void, the fruits thereof, although they were taken in good faith, have to be restored, provided they be not already consumed.

## COLLEGE

1. A college is a collection of persons constituting one representative body.

2. There are three things required for a college, viz. :

(1) Number. Three make a college; but the *ius* can be preserved in one or two.<sup>1</sup>

(2) Erection, which can only come from the Pope.

(3) A common seal and a convocation or chapter.

3. A college can be dissolved in three ways :

(1) By the will of all the members.

(2) By the superior if they be unwilling.

(3) By the death of all the members.

## COMMISSARY APOSTOLIC

1. A commissary is, in general, one to whom a superior has given the commission of judging, or of taking information about an affair. When the superior is the Pope the official is styled a commissary apostolic.

<sup>1</sup> In canon law a synod, council, or convention requires five members: a parish, ten men; a family, two persons; and ten to fifteen constitute a crowd.

2. Sometimes, in an appeal to the Holy See, the Pope appoints commissaries on the spot taken from the neighbouring dioceses. If, when they arrive at judgment, three of them do not agree in the sentence, the party who is aggrieved can appeal from their decision and obtain new commissaries until he can get three to agree on the verdict.

3. As delegate of the Holy See a commissary should hold some ecclesiastical dignity, or personate, or be a canon, or vicar general, or a conventual prior, or superior of regulars.

4. In all things he has to be guided by the terms of his commission, which he has to exhibit in due form to those concerned in the business, so that they may know that he has been lawfully appointed.

### COMMISSION OF INVESTIGATION

1. The Commission of Investigation is a body of priests appointed by the bishop in synod to inquire into the circumstances concerning the final deprivation of a rector.

2. The body consists of five priests, one of whom is appointed by the bishop as president. Two of the five must be canons of the cathedral chapter.

3. Three of the Commission form a *quorum*, and they must examine into the case and advise the bishop thereon.

4. The Commission holds office until the next synod; but should any member die meanwhile the bishop must nominate another.

5. In England the Commission which was decreed in 1853 was only used in cases of final deprivation of rectors. In Scotland and America it also takes cognisance of censures, ecclesiastical punishments, or grave disciplinary chastisement to be inflicted upon any cleric. The English procedure has been improved upon by the Fourth Council, which extended what was originally intended only in cases of depriving missionary rectors, to the case of the simple rector also. But within the last few years the Instruction S.C.P.F. *Cum magnopere* has been also extended to England except in the cases of the smaller dioceses.

6. The Commission holds a place analogous to that of an auditor (*q.v.*). It is charged with the exclusive and entire hearing of the case, but it cannot pronounce sentence. Its business is to report to the judge.

7. The Commission is a board of assessors (*q.v.*), and the advice

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given by it to the bishop forms a part of the authentic records of the case. It must have the greatest weight with the judge and also with the Courts of Appeal.

8. The members of the Commission can be justly challenged as suspected of partiality, and the bishop is obliged to admit the challenge unless he would be himself suspected of the same partiality.

9. As the inquiry held by the Commission takes the place of a canonical trial all the essential forms of justice must be observed. Besides the Commission itself there must be the fiscal procurator (*q.v.*) or prosecutor on the part of the diocese and a notary (*q.v.*). The defendant (*q.v.*) can be presented by a procurator (*q.v.*), or he can conduct the case himself.

10. As the mode of procedure varies in different places it will be necessary to describe them. It will be noticed that before the actual trial there is a preliminary investigation, which must be conducted according to fixed rules; then if the evidence gathered be sufficient, the actual court is opened and the trial begun. After both parties are heard and their witnesses examined, then sentence is pronounced, and this is subjected for ten days to an appeal if need be. If there be no appeal, or the appeal itself be either quashed or rejected, then follows in due course the execution of the sentence. The various methods of procedure fall into four classes :

- (1) The English of 1853.
- (2) The American up to 1884.
- (3) The American and Scotch from that date.
- (4) The new English.

Hence four sections :

### § 1. *The English Commission of Investigation*

I. West.  
xiii. 2

11. 'The bishop should at his diocesan synod select five of his most suitable priests to form a Commission<sup>1</sup> of Investigation, and one of these should be made president of the Commission by the bishop.

III. West.  
xviii.

12. 'Those who have been named as members of the above-mentioned Commission at a diocesan synod should retain office until the next diocesan synod, when they may be reappointed or others put in their places. But if, meanwhile, by death or resignation of any one of those appointed the Commission should be decreased, the bishop shall nominate another member with

<sup>1</sup> In the text the word *Council* or *Commission* is used ; I make use of *Commission* as the term in usual practice.

due regard to the proportion between the chapter and the body of the clergy which was recommended at the first provincial synod.'

13. 'Recourse should not be had to the Commission of Investigation unless the missionary rector prefers this course to giving up his position and office of his own accord, the bishop explaining to him in clear and precise terms the reasons impelling him to remove him altogether.'

I. West.  
Appendix,  
x. n. 1

14. This is now extended to the case of any rector. 'However, before sentence of this kind of deprivation is pronounced, the accused should be admonished, and should he not improve, the same process should be followed in his case as the Sacred Congregation of Propaganda, by its decree of 4 August, 1853, forwarded to the bishops of England, prescribed previous to the final rejection of a missionary rector.'

IV. West.  
xii. 8

15. 'When the bishop has determined to take the opinion of the Commission of Investigation in reference to the deprivation of a missionary (*or of any*) rector, he should entrust his vicar general or some other priest appointed by him for the purpose, with the task of drawing up in writing a *relatio* of the cause for proceeding to the deprivation, together with the result of the preceding investigation, and a report of any circumstances which specially concern the cause or its demonstration.'

I. West.  
Appendix,  
x. n. 2

16. 'He should make known by letter to each of the members of the Commission the place, day, and hour of meeting.'

*Ibid.* 3

17. 'He should summon by letter the missionary (*or other*) rector in question to the place fixed for holding the Commission on the day appointed, and set forth in full his reasons for proceeding to deprive him, unless motives of prudence suggest otherwise. And he should warn the said rector to prepare in writing a reply supported by proofs to all that has been brought forward in the account of the case, either previously by word of mouth or at present in writing.'

*Ibid.* 4

18. 'As soon as the members of the Commission have assembled together at the appointed time and place, the bishop shall order secrecy to be kept as to all matters that are heard at the Commission. He should likewise remind them that the investigation is not a judicial procedure, but is set on foot for the purpose and is to be conducted with a view of arriving, by any means whatsoever, at the knowledge of the truth, so that each member, weighing all matters in the sight of God, may form as accurate a judgment as is possible as to the truth of the facts upon which the case rests. He should also warn them against doing anything in the course

*Ibid.*



of the inquiry which might render themselves or others liable to loss or difficulties, and especially might expose them to the danger of an action for libel or of any trial before a civil tribunal.

*Ibid.* 6      19. 'The account of the case should be read before the Commission by the bishop's official and he shall also reply to the questions put to him by the president or by any of the other members through the president for their further enlightenment.

*Ibid.* 7      20. 'The missionary (*or other*) rector should thereupon be admitted, and should read the reply drawn up by him, as well as answer the questions put to him.

*Ibid.* 8      21. 'Then, after consulting together, if in the judgment of two-thirds at least of the members the facts appear to be proven, each should give his opinion in writing and the reasons upon which it is founded; the opinions should be compared; the proceedings of the Commission must be drawn up by the bishop's official, signed by the president in the name of the Commission, and forwarded to the bishop with the opinion of each in full.

*Ibid.* 9      22. 'If any further inquiry seem to be necessary or advisable, on the same day or on any other day fixed by the Commission for a meeting, the witnesses whom the Commission judge to be requisite should be summoned, and the missionary (*or other*) rector heard as to those whom he also wishes to be summoned.

*Ibid.* 10      23. 'The witnesses for the case should be examined separately by the president and by the other members through the president, and, first of all, in the absence of the missionary (*or other*) rector, and this as minutely as possible, but not on oath (*q.v.*). But if the witnesses are willing they may depose that they are ready to repeat their testimony upon oath if the opportunity be given them.

*Ibid.* 11      24. 'With the consent of the witnesses and at the discretion of the Commission the evidence may be repeated in the presence of the missionary (*or other*) rector, who may examine the witnesses through the president.

*Ibid.* 12      25. 'In the same way the witnesses against the case should be examined.

*Ibid.* 13      26. 'The opinion having been compared, the course mentioned above should be followed.

*Ibid.* 14      27. 'If the witnesses be unwilling or unable to attend the Commission, or if their evidence be not as complete as it might be, two at least of the members should be deputed by the Commission to go to them, and after visiting this or that place or in any other way whatsoever in their power seeking out means for settling any doubts, they should give an account of their inquiries

to the Commission, so that no means should be left untried for arriving at the truth with moral certainty.'

28. After receiving the report of the Commission of Investigation then the bishop proceeds, as judge, to pass his definite sentence (*q.v.*).<sup>1</sup>

29. In cases of appeal, the S.C.P.F. 28 June, 1884, decreed that a metropolitan Commission of Investigation should be appointed by the bishops of the province every year. It is to consist of seven priests, who must examine the process resulting from the first inquiry and re-examine the cause according to the method prescribed for Commissions of Investigation.

30. From the sentence of the metropolitan it is always lawful to appeal to the Holy See, and in such a case the documents of the first and second investigations have to be sent to Rome.

31. If the first investigation take place in the metropolitan diocese and the priest be therefore a subject of the archbishop, the second investigation shall be made by the senior suffragan, who will consult the assessors of the Commission of Investigation of that diocese.

## § 2. *The American Commission previous to 1884*

The procedure followed in the United States is derived from an Instruction of S.C.P.F. dated 20 July, 1878. Some dioceses still use it.

32. The Instruction of 1878 is based upon the Westminster method, but with certain changes, for instance :

33. It is for use not only in criminal but also in disciplinary cases.

34. The members of the Commission must be five or, at least, three in number, 'and as much as possible those skilled in canon law.' They are to be appointed in synod.

35. Their principal duty 'shall be to inquire into and take due cognisance of criminal and disciplinary causes of priests and other ecclesiastics according to the mode of procedure given below and then to assist the bishop in deciding the same.'

36. 'Before depriving a rector the bishop shall engage three, at least, of the Commission to take cognisance of the causes, and shall not act until he has listened to their advice.'

37. After the rector has read his reply to the charge made against him 'he shall, further, have full liberty to produce, yet

<sup>1</sup> This method is copied in full in the Appendix to the Synod of Maynooth, 1875, and shows the procedure followed in Ireland.

within a period of time to be determined by the Commission, whatever else may serve to his defence.'

38. 'Should it happen that the missionary rector, who is on trial, refuse to appear before the Commission he shall be summoned a second time by letter and a suitable space of time fixed for his appearance. Should he fail to appear on the day appointed, unless he can plead a legitimate excuse, he shall be considered contumacious.

39. 'All the records and documents of the trial shall be carefully kept in the episcopal court, so that they may be produced without difficulty in case of appeal.'

40. From a reply of the S.C.P.F. to some questions, the members of the Commission are to be appointed by the bishop in synod, after taking the advice of the clergy there assembled, 'though for reasons known to himself he may not be willing afterwards to follow this advice.' Outside of synod the appointment belongs absolutely to the bishop, 'although it is becoming that he should, in filling any vacancy which may occur in the Commission, take the advice of the remaining commissioners.' The opinion given by the Commission is only consultative; the final sentence is reserved to the bishop. The acts of the investigation and the opinion of the commissioners must always be inserted in the process. The duty of the commissioners is judicial, since the hearing of the case is committed to them, and they assist the bishop as assessors (*q.v.*). Every rector is free to have with him before the Commission another priest, who must be approved by the bishop, in order either simply to assist him, or to make remarks, or to conduct the defence.'

### § 3. *The American and Scotch Commission since 1884*

41. This method of procedure (*q.v.*), known as the Instruction S.C.P.F. *Cum magnopere*, is built upon the Instruction sent out by the S.C.E.R. 11 June, 1880. The following are its provisions:

42. The ordinary is bound by his pastoral charge diligently to take care of the discipline and correction of clerics, to watch assiduously over their morals and providently make use of the remedies laid down in the canons for preventing or for taking away abuses which sometimes creep in among the clergy. (i.)

43. Of these remedies some are preventive and others repressive. The former are designed for preventing evils, for removing the causes of scandals, and for avoiding the voluntary occasions and the proximate causes of sin. The latter, however, are ordained

for the end that delinquents should be recalled to a better way, and that the effects of faults should be wholly removed. (ii.)

44. The application of either remedy is left to the conscience of the ordinary, who must observe the prescriptions of the canons according to the gravity of the causes and of the circumstances. (iii.)

45. The preventive remedies are chiefly spiritual exercises, monitions, and precepts. (iv.)

46. But before they are used it is fitting that there should be a previous summary recognition of the facts, the notes of which the ordinary shall be careful to preserve in case it may be necessary to proceed *ad ulteriora*, and that he may give an account of the whole case to the higher ecclesiastical authority in case of a legitimate *recursus*. (v.)

47. The canonical monitions may be done either secretly (even by letter or by some third person) after the manner of a paternal chiding, or the legal form may be observed, care being taken that the giving of these monitions may be proved by some act. (vi.)

48. If the monitions are in vain the ordinary commands that a similar monition be sent by the Court to the delinquent in such a wise that it explains what he must either do or avoid, adding the threat of condign ecclesiastical punishment which will be incurred if he transgress this precept. (vii.)

49. The precept is to be enjoined on the delinquent by the chancellor of the court before the vicar general or before two witnesses, clerical or laymen, of known probity. (viii.)

(1) The act of injunction of precept is signed by the parties present and by the delinquent if he wish.

(2) The vicar general can impose on the witness an oath of secrecy if prudence requires so on account of the nature of the affair.

50. As regards repressive remedies or punishments, let ordinaries remember that the extra-judicial remedy *ex informata conscientia* for occult crimes constituted by the Council of Trent c. 1, § 14, *De Reformatione* remains in its full vigour. (ix.)

51. In a criminal action, whether on account of disobedience to a precept, or of common guilt, or of the transgression of ecclesiastical laws, let the process be conducted summarily and without the commotion of a formal trial, but always with the observance of the laws of justice in their whole substance. (x.)

52. The process is instituted *ex officio* by accepting the *libellus supplex* or by accusation or by notice in any way brought before

the Court; and it is to be terminated in such a manner that by all prudence and care the truth may be made clear, and that the crime as well as the guilt or innocence of the accused may be proved. (xi.)

53. Where courts are already established, the compilation of the process can be committed to an upright and skilful ecclesiastic who is assisted by a notary. In dioceses where the episcopal courts cannot yet be instituted, in the meanwhile, the Instruction of 1878, together with the accompanying replies to certain doubts that were raised, shall be observed; that is to say, each bishop in his diocesan synod, after hearing his clergy's advice, which he is not bound to follow, shall select five, or, where circumstances will not allow, three priests experienced and, as far as can be, skilled in canon law for the office which the aforesaid Instruction determines. If for any grave cause the synod be not held, five or three ecclesiastics, as above, shall be deputed by the bishop for the same duty. Those elected shall remain in office until the next synod, in which they may either be confirmed or have others appointed in their place. If, in the meantime, the prescribed number of counsellors be lessened by death, resignation, or other cause, the bishop, with the advice of the others belonging to the Commission, shall appoint new ones. Moreover this Commission shall be bound by oath faithfully to fulfil its office and to act under the presidency of the bishop or of his vicar general. (xii.)

54. In every episcopal curia let there be appointed a fiscal procurator to satisfy justice and the law. (xiii.)

55. For intimations or notifications, if there be no curial apparitors, let the bishop make use of any qualified person who shall deliver them and give proof thereof; or they may be transmitted by registered post (in places where this system obtains) keeping the receipt of delivery and of acceptance or of refusal. Intimations and notifications must absolutely be always in writing. (xiv.)

56. The *fundamentum delicti* can be gathered from the very exposition set forth in the process which is confirmed by authentic informations or extra-judicial confession or by the depositions of witnesses; the *transgressio praecepti* is deduced from the decree itself and the act of intimation made according to sections 7 and 8. (xv.)

57. For admitting the culpability of the accused there must be legal proof which should consist in those *momenta* by which clearly demonstrated truth is brought forth into light; or at least

there should be induced a moral conviction by the removal of any rational doubt to the contrary. (xvi.)

58. Persons who are to be examined must be heard separately. (xvii.)

59. Witnesses for the prosecution or for the defence, if there be no legal impediment to the contrary, are to be heard after taking an oath to tell the truth and, if necessary, also to preserve secrecy. So before they testify, let them take oath both as to the truth and as to secrecy. And more especially is the oath of faithful performance of duty and of secrecy concerning the business to be demanded of those who take any part officially in the instruction of the process. (xviii.)

60. Witnesses who live in places far away, or in another diocese, should be examined through the ecclesiastical authority of the place in which they dwell, for which purpose a copy of the transactions is to be transmitted; and this authority shall observe in the reply the rules contained in this Instruction. (xix.)

61. If witnesses are mentioned who ought to be questioned either about facts or circumstances regarding the substantial merit of the case, and they cannot be examined, either because it is not lawful or becoming to cite them before the Court, or because having been asked they refuse to be present, it is necessary that the fact should be mentioned in the acts and that the deficiency should be supplied by the testimony of others who by hearsay or otherwise may know of the matter in question. (xx.)

62. When everything which pertains to the establishing of the truth of the facts and to the proving of the guilt of the accused has been completed, then the person charged is, by written intimation, to be summoned for examination. (xxi.)

63. In the intimation, unless prudence otherwise forbids, the charges against the accused are to be detailed so that he can prepare himself for the defence. (xxii.)

64. If on account of the kind of charges or for any other cause it be not expedient that they should be expressed in the intimation, it will be sufficient in this to mention that he is cited for examination so that he may defend himself in the matter about which an inquiry against him is being held. (xxiii.)

65. Should the accused refuse to attend once more, let the intimation be made, and in it let there be peremptorily fixed a fitting time within which he must appear before the Court; and let it be notified to him that if he do not obey he may be adjudged contumacious; and if he transgress this intimation without a

proven legitimate impediment, he will be held as contumacious *de facto*. (xxiv.)

66. But if he present himself for examination let him be heard, and where he brings forward replies of any value let them be accurately and exhaustively discussed as far as possible. (xxv.)

67. Then is to begin the contestation (*q.v.*) of the crime and the arguments which are used to prove that the accused is guilty and deserves canonical punishment. (xxvi.)

68. The accused, when he thus knows the charges brought against him in the acts, can reply to them and, if he will, can use the right of self-defence. (xxvii.)

69. He can, if he ask, obtain that a period should be set for bringing forward his defence in writing; especially as on account of what is said in Article xxiii. he could prepare his reply to the accusation brought against him. (xxviii.)

70. The process being completed, let the notary draw up a summary of the principal arguments which have appeared therein. (xxix.)

71. On the day of hearing let there be granted to the accused the faculty of conducting his defence through another priest acting in his name. If a suitable priest cannot be found a Catholic layman can be used. But either of these has to be approved of by the ordinary. (xxx.)

72. But if the accused refuses to depute a defender the ordinary *ex officio* shall appoint one. (xxxi.)

73. The defender may, under proper precautions, inspect in the episcopal chancery the process and the summary, so that he may protect the accused, and he can exhibit in writing the defence before the opening of the cause. He is also to be bound by oath to preserve secrecy whenever the judge considers the nature of the case requires it. (xxxii.)

74. The process and its summary is to be sent to the fiscal procurator so that he may fulfil his duty. Then it is to be sent to the ordinary who, when he has full knowledge of the cause, shall fix the day on which it is to be argued and decided; and he shall take care that it be made known to the accused. (xxxiii.)

75. On the day appointed the cause is begun in the presence of the bishop or of the vicar general and of the fiscal procurator, the defender and the chancellor. (xxxiv.)

76. After the fiscal procurator and the defence have been heard, sentence is to be pronounced, and the *dispositiva pars* thereof is to be dictated to the chancellor, and, if it be one of

condemnation, express mention being made of the canonical sanction which is applied against the accused. (xxxv.)

77. Let the sentence be made known to the accused, who can make an appeal to the Court of higher instance.<sup>1</sup> (xxxvi.)

78. In the appeal there should be observed the rules laid down by Benedict XIV. of sacred memory in Constit. *Ad militantes* of 20 March, 1742, and others prescribed by S.C.E.R. by the decree 18 December, 1835, and the circular letter of 1 August, 1851. (xxxvii.)

79. The interposition of the appeal must be made within the term of ten days from the notice of the sentence; and after that time has elapsed the execution of the sentence takes place. (xxxviii.)

80. An appeal being entered, the Court shall at once send to the ecclesiastical authority of higher instance all the acts of the case in their original autographs: that is, the process, its summary, the defence and the sentence. (xxxix.)

81. This authority of higher instance, when the appeal is known, enjoins on the appellant to depute within thirty days a defender, who must be approved of by the Court. (xl.)

82. If that peremptory period pass unheeded, the accused is held to have renounced the benefit of appeal, which, therefore, the judge of the higher court declares no longer to exist. (xli.)

83. In an appeal from an episcopal court to that of the metropolitan, let there be observed the same procedure in taking cognisance of the cause and in deciding it that is indicated in this Instruction. (xlii.)

84. If a cleric, notwithstanding the privilege of the *Forum*, be subjected by process and judgment to the civil power on account of common crimes, let the ordinary take summary information of the crime and inquire whether, according to the sacred canons, it be a case of incurring infamy, irregularity, or other ecclesiastical punishment. (xliii.)

(1) During the case, or while the accused be detained in prison, it is prudent for the ordinary only to employ merely provisory steps.

(2) After sentence has been pronounced, if the accused be set at liberty, the episcopal court may proceed according to the evidence already collected in the manner which is laid down in this Instruction.

85. In doubtful cases and in different difficulties in practice

<sup>1</sup> The Third Baltimore Plenary Council decrees: 'If the appeal be from the judgment of a metropolitan court of first instance, the appeal by special concession of the Holy See is to be made to the nearest metropolitan.



let the ordinaries consult this Sacred Congregation so as to avoid contentions and nullity of their acts. (xliv.)

86. Episcopal courts shall not easily be condemned to damages or costs, for, as often as the informative process shows that there was sufficient evidence for proceeding against the accused, the judge of appeal shall abstain from such damages, since the evidence was sufficient to excuse the judge of the first instance from that true and real calumny which requires condemnation of this kind. (xlv.)

*Collec-  
tanea  
S.C.P.F.,  
no. 78*

87. Nothing is to be considered to be innovated or weakened in the decree 125 as regards the nature of missions, and decrees 77 and 108 of the Second Plenary Council of Baltimore as regards the juridical effects of the dismissal of missionaries from office, except in those matters which have lately been constituted concerning parish priests or irremovable rectors. (xlvi.)

#### § 4. *The new English.*

88. The Instruction *Cum magnopere* has been lately extended to England for the larger dioceses.

89. It also obtains in Scotland.

### COMMISSION ON SACRED MUSIC

1. Pius X. by his *Motu proprio* of 22 November, 1903, orders :

‘For the exact execution of what has been herein laid down the bishops, if they have not already done so, are to institute in their dioceses a special commission composed of persons really competent in sacred music; and to this commission let them entrust, in the manner they find most suitable, the task of watching over the music performed in their churches. Nor are these persons to see merely that the music be good in itself, but also that it be adapted to the power of the singers and be always well executed.’

2. From this it will be seen that the Commission is of obligation.

3. It is to be composed of those who are really competent. Hence a real knowledge of music, practical and theoretical, is required; for not only are they to pronounce, positively or negatively, on the music itself, but they are to be able to judge the capacity of choirs before they allow them to attempt any particular music.

4. The Commission, moreover, is charged with seeing that the music used is always well executed. Hence it would seem that the Commission must be acquainted with the choirmaster’s art so as to secure a fitting rendering of the Church’s music.

## COMMISSION FOR SEMINARIES

1. The seminary is the joint interest of bishop, chapter, and clergy. It is therefore the mind of the Church, as expressed by her legislation, that all parties concerned should join in the administration. Hence the Church orders the appointment of commissions which represent all interests. But where a contrary custom (*q.v.*) obtains, the sanction of the Holy See would seem to be necessary before any innovation be made.

2. As the administration of the seminary consists in spirituals as well as temporals, so, by law, there must be commissions appointed for each.

3. The spiritual Commission.—The Council of Trent orders the bishop to select two of the canons of his cathedral chapter to form this commission. Their advice has to be asked on the following matters :

Sess.  
xxiii. cap  
18, d. r.

- (1) The laying down of general rules for the seminary.
- (2) The admission of students.
- (3) The choice or selection of the books to be used.
- (4) The punishment of ill-doers.
- (5) The visitations.
- (6) The election and removal of professors, the confessor, and the like.

4. The bishop is bound for the validity of his acts to consult the Commission ; but he is not bound to follow their opinion.

5. The temporal Commission.—The same Council orders that this commission be formed of four members, viz. two canons and two of the other priests of the city. Of these the bishop chooses one canon and one priest ; the chapter chooses the other canon, and the clergy of the city choose the second priest. The advice of this commission has to be asked on the following matters :

- (1) The taxes or contributions (if any) to be made for the support of the seminary.
- (2) The daily expenses.
- (3) The administration of the entire property and income.
- (4) Union of benefices to the seminary.
- (5) The election or expulsion of the servants.
- (6) In the appointment or removal of the rector.

6. The bishop is bound, for the validity of his acts, to consult the Commission ; but he is not bound to follow their opinion.

7. Either this temporal commission or another elected on

similar lines has to be present when the administrators of the seminary present their annual report to the bishop. Hence all the diocese can know what is to the common interest.

8. These Commissioners, once appointed, cannot be changed or removed without a just cause, such as old age, infirmity, and the like.

9. In the United States the Third Council of Baltimore ordered that the two Commissions should be instituted; by leave of the Holy See each must consist of at least one priest. For diocesan seminaries the bishop appoints the Commission with the advice of the diocesan counsellors. For provincial seminaries the bishops of the province appoint without the advice of consultors.

### COMMON LAW

1. Common law is that ecclesiastical law which is *per se* binding upon all the faithful.

2. The common law holds good unless a dispensation has been granted; and this dispensation may also cease to be valid when the cause for which it was granted ceases to exist.

3. The presumption is always in favour of the common law. Ignorance and error cannot prescribe custom against it.

4. There is no real opposition between common and particular law (*q.v.*); for this is either of a temporary nature or supplies, for local exigencies, what the common law has left untouched.

5. Common law, therefore, obtains everywhere; and in missionary countries the effort must always be towards a completer approach to the full common law.

6. The Church abhors all arbitrariness and despotic ruling, and both bishops and clergy find their liberty of action in a close and faithful observance of the common law. But custom (*q.v.*) must always be respected by the inferior legislators.

7. In England the common law was restored by Pius IX., 29 September, 1850, in these following passages from the Apostolic letter *Universalis Ecclesiae regendae potestas*.

(1) 'We deemed that the time had come for the form of ecclesiastical government in England to be restored to that position in which it exists in those countries where there is no reason for the government being by the extraordinary means of vicars apostolic.

(2) 'Such a change had taken place as to warrant a return to the ordinary episcopal form of government.

(3) 'We . . . constitute and decree that in the realm of England there should flourish, according to the common rules of the Church, a hierarchy of ordinary bishops &c.

(4) 'But as regards the sacred government of the clergy and laity, and in other things which belong to the pastoral office, the archbishop and bishops of England will now enjoy all rights and faculties which the other Catholic archbishops and bishops of other countries, by the common ordination of the sacred canons and apostolical constitutions, use and can use; and they will be bound likewise by the same obligations which, by the same common discipline of the Church Catholic, bind other archbishops and bishops.

(5) 'Hence the archbishops and bishops of England will be free to decree whatsoever pertains to the fulfilment of the common law or by the general discipline of the Church is permitted to the authority of the bishops.

(6) 'For in the restoration of the ordinary hierarchy of bishops and in decreeing by this our letter the observance of the common law of the Church, we have had an eye mainly to this, that we might provide for the prosperity and increase of the Catholic religion throughout the realm of England.'

8. The same Pope in other documents refers to the common law as being introduced with the hierarchy; in fact the very *raison d'être* of a hierarchy is the common law. In the letter erecting the cathedral chapter he says:

(1) 'We, moreover, declared that the administration of all these (*dioceses*) was to be carried on according to the common rules of ecclesiastical law. 19 Nov. 1850

(2) 'And these chapters, from the moment of their institution, shall enjoy all rights, and be bound by all the obligations which by the common law of the sacred canons are proper to metropolitan or cathedral chapters.' *Ibid.*

9. The S.C.P.F. in its various decrees granting dispensations from the common law make it clear that these are but temporary arrangements, *e.g.*:

(1) 'Owing to the circumstances of the newly appointed churches several things concerning the chapter of a cathedral church, which are in canon law laid down, cannot at once (*statim*) be carried out. . . . 21 April, 1852

(2) 'Although when the episcopal hierarchy was re-established throughout the realm of England the observance of the common ecclesiastical law was prescribed generally, yet it appears that this *Ibid.* . . . Concerning the appointment of missionary rectors

can be hardly done at once (*statim*) . . . until by God's goodness the common ecclesiastical rules can be completely followed. . . . And our most holy Lord . . . willed that for the time being it should be followed.'

Capitular  
Statutes,  
§ 52

10. The First Westminster Provincial Council says :

'The interpretation of statutes must be based upon the principles of common law.'

11. Leo XIII., in Constit. *Romanos Pontifices*, 1881, looking at things as they were at that date concerning the question of regulars, yet says :

'For although the re-establishment of the hierarchy has the effect of rendering possible the adoption of the ordinary discipline of the Church in the management of Catholic affairs amongst the English, nevertheless things continue to be managed there as yet very much in the same manner in which they are managed in missions.'

### COMMUNICATION 'IN SACRIS'

1. Catholics are forbidden, by a twofold obligation, to communicate *in sacris* with heretics and schismatics :

(1) By the natural divine precept, which is for the good of the faithful, and removes them from danger of perversion and corruption. Hence Catholics are forbidden to communicate *in sacris* with heretics or with schismatics, both by the precept of Faith, which prohibits any act of a false religion, and by the precept of charity, which commands us to avoid giving scandal.

(2) By the ecclesiastical law, which directly excommunicates heretics and schismatics, and indirectly forbids the faithful to consort with them especially *in sacris*.

2. Catholics, in places where there are only schismatical churches, are not allowed to go to these for fulfilling the precept of hearing Mass.

3. The Holy Office also declared that it is not lawful, as a rule, for Catholics to be present at the sermons, baptisms, and marriages of heretics and schismatics ; but if they go for some lawful reason, without any communication *in sacris*, and if such a going is not held to be professing a false religion, it is *in se* an indifferent act which may become bad by its end or by circumstances attaching to it.

4. It is not lawful for missionaries to say mass in churches used by heretics or schismatics ; nor to allow them to use our churches.

Holy  
Office,  
5 Dec.  
1668

10 May,  
1770

14 Jan.  
1818

But Clement XI. gave leave for missionaries in Ethiopia to use the temples of heretics or schismatics for the purpose of saying mass, the more easily to promote the conversion of schismatics and infidels.

S.C.P.F.  
21 May,  
1627  
16 Sept.  
1695  
12 April  
1704

5. The Holy Office decreed that it was not lawful for Catholics to take their children to non-Catholic ministers to be baptized ; nor to take part in the communion service, although they considered it as something not sacred.

26 Sept.  
1661

6. As regards marriages, *see* MIXED MARRIAGES, No. 8.

7. As regards funerals it is allowed, as a mere civil ceremony, to accompany the corpses of heretics or schismatics, provided there be no participation in a religious rite, or scandal in so doing.

8. The First Maynooth Synod (1875) warns Catholics, who are in service with non-Catholics, not to assist at their prayers ; and bids them, if they cannot freely exercise their religion, to leave a service which they cannot retain without danger and wounding of conscience.

n. 22

9. The same synod forbids Catholics to go to the temples of heretics for the purpose of assisting at their worship or of hearing their sermons, or reading their books treating of religion.

n. 25

## COMMUNION

*See* HOLY EUCHARIST

## CONCORDAT

1. A *concordat* is an agreement which the Pope makes with some supreme civil power. By it the Church delegates and communicates some of her powers to the State in return for an acknowledgment and the free exercise of duties and rights inherent in her constitution. Hence a concordat is on the part of the Church a concession *quoad materiam* and a bilateral contract *quoad formam*.

2. Leo XIII., 3 February, 1884, claims that a *concordat* is based upon justice, not on mere fidelity as a certain school holds ; and in another letter, 29 April, 1889, he affirms that neither of the contracting parties can derogate or abrogate from it without the consent and knowledge of the other. The same Pontiff, in a third letter, 16 February, 1892, speaks of the *Concordat* with France 'as a solemn and bilateral pact,' and Pius X. (*f.r.*) has recently upheld steadily the same doctrine.

*Epist. ad  
Giallos*

*Epist. ad  
Archiep.  
Mona-  
chens*

*Epist. ad  
Giallos*

3. Canonists hold that the Church can and ought to revoke

concessions made to the civil power if, from change of circumstances, they turn to the harm of souls ; for then the observance of the agreement would be sinful. While the agreement lasts, physical losses may be endured ; but losses of the moral order are never to be borne.

4. If the State do not keep her part of the contract, it is within the competency of the Church either to rescind it or to urge its observance.

5. Although the contract is called bilateral it is considered so, not in the sense that the two parties are equal, but because they promise to observe the conditions and make an obligatory and reciprocal engagement so to do.

6. In English-speaking countries the only concordat is that between the Holy See and the British Government concerning Malta and the question of clandestinity (*q.v.*).

## CONCUBINAGE

Sess.  
xxiv. c. 8 ;  
Sess. xxv.  
*De reform.*  
*mat.* c. 14

1. Concubinage is the state of having or being a concubine ; and though in its strict sense it implies the habitual presence of the woman in the house, yet the Council of Trent takes it in the wider sense of evil living between two unmarried persons of different sexes, either at home or abroad.

2. There is private and public concubinage.

3. Public concubinage is not only that which has been the subject of a sentence or admitted in court, or of such notoriety that it cannot be hidden, but also that which continues after a superior has warned a subject who keeps a woman without character and suspected of incontinency.

Trent,  
Sess. xxv.  
c. 14

4. Clerics guilty of concubinage are, after the first monition, to be suspended from all their functions ; and after the third warning they are to be deprived of their office and rendered incapable of receiving others. If they still continue in their evil courses they are excommunicated. It is commonly held that, if such be the custom of the place, the bishop can proceed at once to the deposition of a concubinary cleric, using the summary form of procedure.

5. Lay persons guilty of open concubinage, after three warnings from the bishop, are to be repelled from the sacraments and excommunicated as public sinners ; and, dying without signs of repentance, they are to be deprived of Christian burial (*q.v.*).

## CONCURSUS

1. A *concursus* is a competition of candidates for the possession of a vacant benefice.

2. The legislation is laid down by the Council of Trent in these words :

(1) 'The Holy Synod ordains that when a vacancy occurs in a parish church either by death or by resignation . . . it shall be the duty of the bishop at once, upon obtaining information of the vacancy of the church, to appoint, if need be, a competent vicar to the same, with a suitable assignment at his own discretion of a portion of the fruits thereof, and to support the duties of the said church until it shall be provided with a rector. Moreover, the bishop and he who has the right of patronage shall, within ten days, or such other term as the bishop shall prescribe, nominate, in the presence of those who shall be deputed as examiners, certain clerics as capable of governing the said church. It shall nevertheless be free for others also, who may know any that are fit for the office, to give in their names that a diligent scrutiny may be afterwards made as to the age, morals, and sufficiency of each. . . . When the time appointed has transpired all those whose names have been entered shall be examined by the bishop or, if he be hindered, by his vicar general and by the other examiners, who shall not be fewer than three, to whose vote, if they should be equal or given to distinct individuals, the bishop or his vicar general may add his in favour of whomsoever he shall think most fit.

(2) 'And as regards the examiners, six at least shall be annually proposed by the bishop or by his vicar general in the diocesan synod ; and they shall be such as shall satisfy and shall be approved of by the said synod. And upon any vacancy occurring in any church the bishop shall select three out of that number to make the examination with him ; and afterwards, upon another vacancy following, he shall select, out of the six aforesaid, the same or three others whom he may prefer. But the said examiners shall be masters or doctors or licentiates in theology or in canon law, or such other clerics, whether religious, even of the mendicant orders, or secular, as shall seem best adapted thereunto ; and they shall all swear on the holy Gospels of God that they will, setting aside every human affection, faithfully perform their duty. And they shall beware of receiving anything whatsoever, either before or after, on account of this examination, otherwise both the receivers and the givers will incur the guilt of simony, from which



they shall not be capable of being absolved until they have resigned the benefices which they were possessed of in any manner whatsoever even before the act ; and they shall be rendered incapable of any others for the time to come.

(3) ' Then after the examination is completed a report shall be made of all those who shall have been judged by the said examiners to be fit by age, morals, learning, prudence, and other suitable qualifications to govern the vacant church ; and out of these the bishop shall select him whom he shall judge the most fit of all ; and to him, and to none other, shall the church be collated by him unto whom it belongs to collate thereunto.

(4) ' But, if the church be under ecclesiastical patronage and the institution thereunto belongs to the bishop and to none else, whomsoever the patron shall judge the most worthy from amongst those who have been approved of by the examiners him he shall be bound to present to the bishop that he may receive institution from him. But when the institution is to proceed from any other than the bishop, then, the bishop alone shall select the worthiest from among the worthy, and him the patron shall present to him unto whom the institution belongs.

(5) ' But, if it be under lay patronage, the individual who shall be presented by the patron must be examined as above by those deputed thereunto, and not be admitted unless he be found fit. . . .

(6) ' The vicar whom the bishop has at his own discretion already deputed for the time being to the vacant church, or whom he may afterwards happen to depute thereunto, shall not be removed from the charge and administration of the church until it be provided for either by the appointment of the vicar himself or of some other person who has been approved of and elected as above. . . .

(7) ' If, however, the said parish church shall possess so slight a revenue as not to allow of the trouble of this examination ; or if, by reason of the open factions or dissensions which are met with in some places, more grievous quarrels and turmoils may easily be excited thereby, the ordinary may, omitting this formality, have recourse to a private examination if, in his conscience, with the advice of the (*examiners*) deputed he shall judge this expedient, observing, however, the other things as prescribed above.

(8) ' It shall also be lawful for the provincial synod if it shall judge that there are any particulars which ought to be added to or retrenched from the above regulations concerning the forms of examinations to provide accordingly.'

Trent.  
Sess.  
xxiv.  
c. 18, d. r.

3. On this Tridentine legislation we may note the following :

(1) Barbosa says that the appointment of the vicar must not be deferred beyond three days after notification.

(2) The list of candidates can be added to by anyone. Hence any parish wanting a particular individual for their pastor can send in the name for the *conkursus*.

(3) The bishop can defer the *conkursus* by edict for six months if the vacancy occurs in the month wherein he has free collation ; but, if in a papal month, the *conkursus* can only be deferred for four months. The day once appointed can be again, if necessary, prorogued, but not for more than twenty days.

(4) The cases recognised by the decree for which the *conkursus* is not necessary are :

(a) A church with so small an income as not worth the trouble of an examination.

(b) Factions and discords.

(c) Lay patronage.

And by other legislation the case of a vicar with cure of souls attached to the cathedral.

4. If only one candidate appears, *ex pluribus descriptis*, the *conkursus* can take place, and there is no cause for a new edict. Should no one appear or wish to be examined, the bishop should fix another time ; and then, if no one present himself or no one be found worthy, then he can fill up the vacancy without any further *conkursus*.

7. The examiners must be synodal or pro-synodal examiners. This is requisite for the validity of the *conkursus*. The presence of one, two, or three examiners who are not synodal or pro-synodal vitiates the whole of the proceedings, and the collation of the vacant church belongs to the Holy See.

S.C.C.  
9 Sept.  
1628 ;  
15 Dec.  
1629

But, *honoris causa*, a non-synodal or pro-synodal examiner may be present ; and after the examination he may question the candidates, but he cannot vote on their qualifications or sign the documents.

6. The bishop has only a casting vote in the *conkursus*, but the final judgment after the *conkursus* is his.

7. No one is to be approved unless he have a majority of the number of examiners.

8. One who has been rejected in a *conkursus* can appeal in *devolutivo* to the higher tribunal ; and then the case is decided solely and exclusively from the acts of the *conkursus* already made.

9. The *conkursus* obviates many difficulties and lessens the

suspicion of favouritism. The bishop's prerogatives are preserved ; the clergy or chapter have to approve of the examiners. Learning is not the only requisite ; and so the good, practical, zealous man has as much chance as his more learned brother.

10. The parochial *conkursus* does not at present obtain in England. In Ireland, by the National Council, whose decrees have been lately approved, the *conkursus* is of obligation two years after the publication of the decrees. In the United States the Third Council of Baltimore has ordered it in the case of irremovable rectors, thus :

'The bishop can appoint the irremovable rectors for the first time without the *conkursus*, though not without the advice of his consultors. After that, only by *conkursus*, and that on pain of nullity of the appointment. However, even after the first appointment, though only in a particular case, the bishop may, without the *conkursus*, though not without the advice of the synodal or pro-synodal examiners, appoint to an irremovable parish an ecclesiastic whose learning is abundantly attested, either by the office which he holds or by his dignity, or also by the long labours with which he has laudably served the Church. Only those are to be admitted to the *conkursus* who, for ten years, have laudably exercised the ministry, and have given proof of their ability to govern a parish spiritually and temporally. Where on account of the vast extent of some diocese a special *conkursus* is difficult, when even an irremovable parish be vacant, it is lawful to separate the *conkursus* by which the learning of the candidate is held from that by which the other qualifications are determined. In these cases a general examination, as to learning, will be held every year ; and the other qualifications will be inquired into as each vacancy arises. Those priests, who have satisfied the examiners as to their learning, will be, so far, considered worthy for any vacancy that may occur within six years from the examination. After that period they will have to undergo another examination.'

III. Balt.  
n. 37, 36,  
57, 43, 58

11. The *conkursus* while not required *de iure communi* is also by pontifical law applied to the offices of canon theologian (*q.v.*) and canon penitentiary (*q.v.*). The leading document is Benedict XIII., Constit. *Pastoralis Officii*, 1725, for Italy and the adjacent islands ; in this he orders that the formal *conkursus* should be held *eodem plane modo* as for parish churches.

12. In England the First Council of Westminster passed the following decree :

(1) 'When a vacancy occurs in the post of canon theologian or canon penitentiary there shall be a *conkursus* among those who

Capitular  
Statutes,  
29

have obtained their own bishop's permission and have been admitted by the bishop of the place, in order that the Holy See or the bishop may select the most fitting from those who have been approved. Others already canons can stand if they have been duly admitted to do so.

(2) 'The alternating proposition of three candidates for a vacant canonry, granted by the Holy See, has no place in the nomination of a canon theologian or penitentiary if the nomination happens on the occasion to fall to the chapter. . . . *Ibid.* 30

(3) 'The interpretation of statutes must be based upon the principles of common law.' *Ibid.* 51

13. Hence it would seem that in England the *concursum* for these two posts should be carried out in accordance with the principles of the Constitution of Benedict XIII., i.e. *eodem plane modo* as for parishes. This was evidently in the mind of the fathers of the First Provincial Synod; for, although there were no parishes and a temporary economy of missionary rector was introduced, it was ordered that synodal examiners should be appointed in every diocese. As the fathers well knew that there was no *concursum* in England for missionary rector, it also seems that their purpose in ordering synodal examiners to be appointed in the next synod was to provide for the *concursum* for these the posts which were instituted in this very same synod of 1852. Hence it seems that only synodal examiners (*q.v.*) are admissible for the validity of the *concursum*; and that the term *alii sacerdotes* should be taken in the sense of pro-synodal examiners. This also applies to Scotland.

14. The *concursum* for any post must be in writing. The form of the *concursum* has been laid down in the Encyclical of Clement XI. 10 January, 1721, and by Benedict XIV. Constit. *Cum illud*, 14 December, 1742. It generally consists of papers on some moral cases &c., to be written in Latin, and a short sermon on some proposed theme to be written in the vernacular. All papers must be signed by the writer and also by the examiners, and they must be kept in the episcopal archives. In case of an appeal they have to be sent to the metropolitan.

15. The result of the *concursum* has to be intimated by the bishop to the Pope when the collation, either of the parish or the canonry, is reserved, perpetually or by reason of the month, to the Holy See. In the latter case the bishop selects the one most worthy and presents him to the Pope for collation.

## CONDEMNED PROPOSITIONS

1. The Church in condemning propositions taken from authors' works makes use of certain *clausulae* which denote the degree of condemnation. The following are the twenty-four notes affecting condemned propositions :

2. *Haeretica*. A proposition is condemned as heretical when it is formally opposed to a truth revealed by God and defined by the Church, or when its contradictory<sup>1</sup> is *de fide*.

3. *Sapiens haeresim*. A proposition is said to be 'smacking of heresy' when its contradictory is not expressly defined, yet is so commonly held in the Church, as though it were actually *de fide*, that the holding of such a proposition affords grounds for a judgment, at least probable, that in the defender of the proposition there lurks the poison of heresy.

4. *Suspecta de haeresi*. A proposition said to be 'suspected of heresy' is one which may be true in a grammatical sense, but nevertheless, from certain circumstances of person, place, and time, seems to insinuate a latent heresy.

5. *Haeresi proxima*. A proposition 'proximate to heresy' is one that is contradictory of another which is either held by many as *de fide*, or is inferred, by evident consequence, from one *de fide* and another that is undoubted.

6. *Schismatica*. A proposition noted as 'schismatic' is one that opens the way to division in the mystical Body of Christ : that is, which separates or withdraws the Church or the faithful from union with the head, the Roman Pontiff.

7. *Iudaica*. A proposition that is 'Judaic' is one which thinks with the Jews concerning Christ, *e.g.* asserting that the Messiah has not yet come.

8. *Pagana*. A proposition that is 'pagan' is one that admits with the pagan the existence of many gods.

9. *Athea*. A proposition noted as 'atheistical' is one that denies with atheists the existence of God.

10. *Blasphema*. A proposition branded as 'blasphemous' is one which contains injury and irreverence against God, our Lady, or the Saints.

11. *Impia*. A proposition that is 'impious' is one which

<sup>1</sup> Contradictory not contrary—that is, the proposition must differ in both quantity as well as quality. An affirmative universal proposition is contradicted by a negative particular one.

overturns or lessens the true worship due to God, our Lady, and the Saints.

12. *Erronea*. A proposition marked with this note is one which contradicts a theological conclusion or one deduced from one *de fide* and another that is evident.

13. *Errori proxima*. A proposition is 'proximate to error' when it contradicts a conclusion which is held by most, though not by all, as a theological conclusion.

14. *Sapiens errorem* or *suspecta erroris*. A proposition noted as 'smacking of error,' or 'suspected of error,' is one which, though in strictness of words it does not contradict any theological conclusion, yet, in the circumstances of person, place, and time, has annexed a grave suspicion of error.

15. *Scandalosa*. A proposition branded as 'scandalous' is one which immediately, and of itself, gives occasion to another of spiritual ruin concerning a doctrine of faith or morals.

16. *Temeraria*. A proposition that is noted as 'temerarious' is one that, while it has against it very strong reasons and the authority of very weighty doctors, has no strong and weighty reasons in its favour. A proposition is negatively temerarious when it has neither in its favour nor against it any reason or authority.

17. *Seditiosa*. A proposition that is marked 'seditious' is one inducing division among the people or raising tumults against superiors in Church or State.

18. *Male sonans*. A 'badly sounding' proposition is one that abuses words against the common sense of the faithful, and therefore may have two senses: one in accordance with the faith and another not in harmony. It is therefore often taken in the bad sense.

19. *Piarum aurium offensiva*. A proposition noted as 'offensive to pious ears' is one that not only sounds badly but also puts forward something unworthy or unbecoming in matters of religion.

20. *Laxa*. A proposition is 'lax' when it too much favours freedom of conscience, and is, in the matter of morals, too licentious.

21. *Simplicium seductiva*. A proposition noted as 'seductive of the simple' is one which, hiding error under the appearance of piety or pretext of good, is apt to lead astray the simple-minded.

22. *Insana, fabulosa, et mendosa*. A proposition is branded as 'insane, fabulous, and lying' when it is one for which there is no reason, no authority, nor any appearance of truth.

23. *Apocrypha*. A proposition is 'apocryphal' when its author

is unknown or uncertain : or it is one which is not clearly canonical or divine.

24. *Antiquata*. A proposition noted as 'antiquated' is one which was formerly admitted as probable because a certain principle was not yet known; but now such a proposition, though not expressly condemned, is nevertheless unable to be held on account of a new decree of the Roman Chair.

25. *Improbabilis*. A proposition that is characterised as 'improbable' is one that is founded on a fallible motive without weight. It is simply unworthy of assent.

### CONFERENCES OF CLERGY

1. The conference of clergy is of two kinds :

(1) For the whole diocese, at the will of the bishop.

(2) For various districts, likewise under the direction of the ordinary.

2. The latter conferences are subject to provincial and synodal laws, and are meetings of the local clergy to discuss theological and liturgical questions. At the will of the bishop, other subjects can be introduced; and he lays down the regulations, the places, and the times for these meetings.

3. The First Provincial Council of Westminster decrees :

xxiv. n. 8

(1) 'It is our express will that conferences on theological and liturgical subjects be held at certain fixed times in all our dioceses. The bishop shall determine, according to circumstances, whether there be only one conference of the clergy of the whole diocese under his own superintendence or a number of conferences under the presidency of the rural deans in their respective deaneries.'

*Ibid.*

(2) 'All priests, both secular and regular, who have the cure of souls (saving the rights of the latter) must attend these conferences and come prepared with their answers.'

*Ibid.*

(3) 'The conferences must send their solutions of the cases or conclusions to the bishop for examination and correction.'

*Ibid.*

(4) 'As to the method of holding these conferences and as to the subjects to be discussed each bishop will arrange for his own diocese.'

4. Leo XIII., in *Constit. Romanos Pontifices*, 1881, decreed as regards the obligation of regulars to attend the conference :

'We declare that all rectors of missions are bound by their office to attend the conferences of the clergy, and, moreover, we ordain and command that vicars also and other religious men

holding ordinary missionary faculties and living in residences and in small mission houses shall do the same.'

## CONFESSOR

1. For the validity of the act the confessor requires three things : intention, order, and jurisdiction.

2. Intention is necessary as a condition *sine qua non* ; for sacramental absolution is a judicial act done by a man for the sake of men. It must therefore be done in a human manner.

3. Order.—The power of order is necessary, for only a priest is the minister of the Sacrament of Penance.

4. Jurisdiction.—The power of jurisdiction (*q.v.*) is also necessary, for as absolution is a judicial act it can only be exercised upon those who are given as subjects by the Church to the confessor. The Council of Trent says :

'As both the nature and reason of a judgment demand that sentence should only be passed upon subjects, it has always been held in the Church of God, and this synod ratifies it as most true, that the absolution which a priest pronounces upon one over whom he has no jurisdiction, either ordinary or subdelegated, is of no weight.'

Sess. xiv.  
c. 7

5. Ordinary jurisdiction as regards the confessor is found in :

- (1) The Pope and the Grand Penitentiary for the whole Church.
- (2) Legates in their provinces.
- (3) Bishops and vicars general over their diocesans.
- (4) Canons penitentiary also over their diocesan flock.
- (5) Parish priests over their parishioners.
- (6) Abbats and regular superiors over their subjects.

6. Delegated jurisdiction, as regards the confessor, is that which is had, not by office, but by commission either *ab homine* or *ab iure*.

7. The S.C.C. 1 April, 1796, decreed that approbation (*q.v.*) is necessary for the validity of the absolution. Now approbation is a judgment of the ordinary concerning the fitness of a priest for hearing confessions. It is an intellectual act and does not necessarily imply the will of the superior to confide subjects to the person approved. To confer jurisdiction is, then, to grant subjects to anyone, and to give effect to approbation. As a rule both approbation and jurisdiction are given at one and the same time.



Urban  
VIII.  
1628,  
and Inno-  
cent X.  
1648 &c.

8. In the case of regulars the difference between approbation and jurisdiction is made clear. For hearing the confessions of seculars the approbation of the ordinary of the diocese is necessary ; but the actual jurisdiction comes from the Roman Pontiff. Though the approbation determines not only their fitness but also their power as to place, persons, and times, and also as to cases.

9. In the hour of death, or probable danger, any priest can absolve from every sin and censure. Also the Church sometimes supplies jurisdiction in cases of common error, and where there is a probable opinion *in dubio iuris*.

10. The Holy Office, by decree 4 April, 1900, allows any priest who has, from his own ordinary, faculties for hearing confessions, to receive the confessions of his fellow passengers during a sea voyage.

11. There is required in the confessor :

- (1) Probity.
- (2) Knowledge, at least mediocre.
- (3) Prudence.

12. Among the laws affecting the confessor may be noted the following :

(1) Benedict XIV., Constit. *Ad eradicandum*, declares that a confessor who demands the name of an accomplice under pain of denial of absolution not only sins gravely, but falls under suspension *ferendae sententiae*.

Pius IX.  
Constit.  
*Apostoli-  
licae  
Sedis*

(2) Those who teach or defend the practice of demanding from the penitent the name of an accomplice incur excommunication *latae sententiae* reserved to the Roman Pontiff.

(3) Absolution given to an accomplice *in peccato turpi* is null and void *extra casum necessitatis*. *In articulo mortis*, even without necessity or danger of infamy or scandal, Benedict XIV. declares the absolution to be valid, though if another priest be available the confessor incurs excommunication *latae sententiae* reserved in a special manner to the Pope.

S. Peni-  
tentiary,  
1 March,  
1878  
HolyOffice  
13 Jan.  
1892  
Pius IX.  
Constit.  
*Apostoli-  
licae  
Sedis*

(4) Every priest loses at once the power of absolving his accomplice *in peccato turpi*. The Holy Office, 28 May, 1873, decreed that this extended to any grave formal and external sin against the Sixth Commandment. If he attempt to do so, even by pretending to give absolution, he incurs excommunication *latae sententiae* specially reserved to the Pope. If the penitent be *in articulo mortis* the absolution is valid ; but the censure is incurred if there be available another priest, even if he be not approved, who can receive the

confession of the dying person without occasioning grave infamy and scandal.

(5) As regards cases of Solicitation (*q.v.*) see under CENSURE and RESERVED CASES.

13. The confessor is bound to maintain an absolute secrecy concerning what comes under the sacramental seal of confession. This obligation remains even after the death of the penitent, and it extends not only over valid confessions, but also over invalid, sacrilegious, or incomplete confessions, provided that the confession be made for the purpose of accusing oneself *in foro conscientiae*. Violations of this obligation are punishable *ex iure communi* by perpetual deposition and imprisonment or by extraordinary penalties according to the circumstances.

14. The obligation of secrecy also binds :

- (1) Any interpreter that may be necessary.
- (2) The superior to whom the case is reserved.
- (3) Any learned man whom the penitent allows the confessor to consult.

(4) Anyone who accidentally or maliciously hears the confession of another.

15. The Westminster Councils have decreed :

(1) ' In every church where confessionals have not been already erected we direct that they be erected in proportion to the number of priests. If the place will not admit of them, the matter must be referred to the judgment of the bishop.

(2) ' The confession of women must be heard in no place but the confessional unless sickness or deafness require otherwise. But even then women must be heard in an open place, where they may be easily seen by others.

(3) ' The priest should sit in the confessional vested in surplice and purple stole.

(4) ' Children capable of committing sin must not only be admitted but must be brought to confession ; and absolution given them if they be in proper dispositions. Wherefore the practice of deferring absolution till they make their first communion is not to be approved. On the contrary, even the more ignorant and dull children must be prepared for this sacrament with the greatest care.

(5) ' The medicinal nature of this sacrament demands that it should be received as soon as possible after the mortal wound of sin. On this account those who contritely confess their sins must

not, without a just cause, be sent back to another time without absolution.

(6) 'The general confessions of converts (*q.v.*) to the faith, especially, must not be put off for a long time; but if they be found sufficiently instructed, and, moved with sincere sorrow of heart, ask for forgiveness, the minister of a most clement God should mercifully impart it.

(7) 'As to the more ignorant kind of converts, the priest should take care that they be well instructed before he admits them to the sacraments.

(8) 'He must diligently question even Catholics on the mysteries of faith when he finds or suspects that they are ignorant, and he must not let them proceed further until they be sufficiently instructed. Moreover the priest should strive, by appropriate questioning, to assist the ignorant, and particularly children, so that he may make the integrity and clearness of the confession more certain.

(9) 'The faithful are at liberty, even at Easter, to confess their sins to any approved priest; nor must they ever be sent away by the priest of their choice on the pretext that they belong to another congregation. Nor should the priest who bears the cure of souls put any obstacle or presume to hinder anyone from having recourse to another priest, but rather let him rejoice about the sheep saved, though it be snatched from destruction by the hand of another shepherd.

(10) 'Priests should beware of receiving any retribution from penitents on account of confession.

(11) 'There should be in each church fixed days and hours for confession, and these should be accurately observed.'

I. West,  
xix. 1-8

## CONFESSOR FOR NUNS

Gregory  
XV.  
Constit.  
*Inscrutabi-*

1. Confessors for nuns cannot be elected by the nuns themselves, but must be appointed and approved of by the bishop of the diocese. But for monasteries subjected to regular prelates, the confessors are elected and deputed by their respective regular superiors, after having been approved by the bishop.

2. In some cases the bishop can depute a secular or a regular of another order to hear the confessions of exempt nuns when they cannot be induced to confess to their regular confessor; or if a confessor be unjustly denied by their own prelate.

3. The bishop, also, in case of the neglect of the regular prelate, can depute an extraordinary confessor.

4. Moreover the bishop can, for a just and reasonable cause, admonish these regular prelates to remove confessors; and if they do not do so or are negligent, the bishop can remove them as often as he judges necessary without signifying the cause. Gregory  
XV. *ut  
supra*

5. The confessions of exempt nuns, if heard by regular confessors who have not had the bishop's approbation (*q.v.*), are null and void. No superior, even a general, can hear their confessions without the bishop's leave.

6. The ordinary approbation for confessors is not sufficient in case of confessors for nuns. They require a special approbation; and, if approved for one convent, they need a special approbation in case they wish to hear the confessions of another convent.

7. Even extraordinary confessors require on each occasion special approbation for each convent.

8. In times of jubilee, even, only confessors who have been approved for nuns can hear their confessions, and they must be approved for particular convents.

9. A confessor who is presented for hearing the confessions of exempt nuns should either be rejected absolutely or approved for not less than three years.

10. A confessor is approved only for three years, and he cannot hear confessions in the same monastery for any longer period without leave from the Holy See. If he attempt to do so the S.C.E.R. has declared him suspended from hearing confessions. 14 March,  
1691;  
2 Oct.  
1626;  
27 March,  
1647, &c.

11. The same rule applies, by common law, to the confessor of girls' schools.

12. A confessor appointed for another term of three years, with due licence, needs another dispensation for a further prolongation.

13. Vicars general should not be confessors to nuns, *quia moniales de ipsis non confiderent*.

14. Nor should parish priests if the work notably interferes with their cure. The same applies to the canon penitentiary (*q.v.*).

15. Cassinese monks and Dominican friars, by their constitutions, are not allowed to hold the office of confessors to nuns for more than two years. Pius V. forbade the Conventual Franciscans from holding the office at all.

16. Generally speaking, regulars, unless in cases of necessity, cannot be chaplains or confessors ordinary or extraordinary of nuns subject to the bishop.

Sess. XXV.  
c. 10

17. Bishops and other superiors are ordered by the Council of Trent to offer twice or thrice a year an extraordinary confessor.

18. Nuns cannot refuse an extraordinary without assigning a cause ; but with a good cause, of which the bishop is the judge, they can refuse the favour. If they accept one, the nuns individually are bound to present themselves before him ; but they are under no obligation to confess to him.

19. Extraordinary confessors can be deputed at any time ; but the practice is that the appointment should be made every few months, and should last for fifteen days. But concerning this the custom of the place and of the order is to be observed ; also the regulations of the decree *Quemadmodum* as below.

20. During the visit of the extraordinary the ordinary confessor should not go to the convent.

21. Leo XIII.—by a decree of the S.C.E.R. *Quemadmodum*, 17 December, 1890—

‘ Admonishes prelates and superiors not to deny their subjects an extraordinary confessor as often as the need of their conscience requires it, and without seeking in any way to find out the reason why their subjects make such a demand or without showing that they resent it. And, lest so provident a disposition as this should be made illusory, he exhorts the ordinaries to name, in all localities of their dioceses in which there are communities of women, well-qualified priests with the necessary faculties to whom such religious may easily have recourse to receive the sacrament of Penance.’

22. This same decree also defines the rights of both the ordinary and the extraordinary confessor as far as Holy Communion is concerned.

(1) ‘ And as to what regards either permission or prohibition to receive Holy Communion, his Holiness also decrees that such permission or prohibition belongs solely to the ordinary or extraordinary confessors, the superiors having no right whatever to interfere in the matter, save only the case in which any one of their subjects had given scandal to the community since his or her last confession, or had been guilty of some grievous public fault, and this only until the guilty one had once more received the sacrament of Penance.

(2) ‘ When the confessor may judge it conducive to the spiritual advancement of any member to receive more frequently he may give the needful permission. But whoever receives from the confessor the permission to receive more frequent or daily communion is bound to inform the superior of the same. Should the latter

think that he [*or she*] has just and serious reasons to oppose such frequent communion, he [*or she*] is bound to make them known to the confessor, in whose judgment he [*or she*] must acquiesce absolutely.'

### CONFIRMATION (SACRAMENT)

1. Confirmation is one of the sacraments of the New Law by which there is given to the baptized the fulness of the Holy Ghost to believe firmly and to fight bravely for the Faith.

2. A bishop is the ordinary minister of the sacrament.

3. A bishop incurs *ipso iure* suspension from pontificals if he confirms his own subjects in a diocese not his own.

4. It is not lawful, *per se*, and, indeed, *sub gravi*, for a bishop to confirm those who are not his subjects, even if they be in his own diocese. But many canonists accept the lawfulness if there be in its favour a custom (*q.v.*). *Concil. Trid. Sess. vi. c. 5*

5. A priest, by delegation of the Holy See, is the extraordinary minister of this sacrament. Greek priests have this delegation. The chrism used by a priest must be blessed by a bishop in union with the Pope, and it is never lawful to administer the sacrament without such chrism or with chrism blessed by an heretical or schismatical bishop. He should, moreover, take heed to his indult and see whether he be allowed to use chrism more than a year old.

6. It is not expedient now to administer Confirmation to children before the use of reason or before the age of seven at the earliest; but children can be lawfully confirmed before that age if there be just causes, *e.g.* danger of death, future absence of the bishop, and a usage obtaining in certain places.

7. A sponsor, who should be another than the baptismal sponsor, and not a religious or a nun, is required by the grave precept of the Church if he can be had. Only one is allowed, and he or she should be of the same sex as the one to be confirmed. The sponsor, moreover, should be at least fourteen years old and himself already confirmed, for otherwise, according to the common opinion, he does not contract, with the one confirmed and the parents, the spiritual relationship (*q.v.*). The Holy Office, 16 June, 1884, decreed that no sponsor could stand for more than two candidates unless necessity made it impossible to find others.

8. The First Council of Westminster decreed:

'Since in this country Catholics, and especially the poor and

R

ignorant, are exposed to daily attempts made to undermine their faith, in order to resist these temptations there is need of the greatest diligence to have them fortified by the sacrament of Confirmation that they may persevere firm and steadfast in faith and good works.

(1) 'In order that they may receive more abundantly the grace of the Holy Ghost communicated in this sacrament, both children and adults must be well instructed before they are confirmed as to its nature and effects, and no one should be admitted who has not a sufficient knowledge of Christian doctrine. We exhort the clergy that according to a commendable custom they take occasion, at the time of preparation for Confirmation, to perfect those who are to be confirmed in the knowledge of the Catechism.

(2) 'As it often happens that children are taken away from school and sent to work when very young, and since it is difficult to recall them to instruction, it is desirable to have them confirmed early, provided they be old enough to make the requisite preparation.

(3) 'Converts also must be urged not to neglect this grace, and not to defer it unnecessarily for a length of time.

(4) 'In every church a register of those confirmed should be kept, and it should also record the names of the godfather and godmother. A list of the persons confirmed must also be given to the bishop.

(5) 'To every person to be confirmed a godfather or godmother, according to sex, should be assigned. In the choice of sponsors for Confirmation the same conditions hold good as those above named in Decree XVI., n. 15, on Baptism.' (xvii.)

## CONFIRMATION

1. There are several kinds of Confirmation :

(1) The confirmation made of the election of a bishop by the Pope.

(2) The confirmation by apostolic authority of the election of an abbat: *e.g.* in the English Benedictine Congregation the abbat-president confirms the election of the new prelate by papal authority.

(4) The confirmation of religious congregations and institutes.

(3) The confirmation of provincial councils.

## CONFRATERNITY

1. A confraternity is a pious association instituted by ecclesiastical authority, and under its charge, for some pious or charitable end which is a matter of counsel not of precept.

2. The S.C. of Indulgences, 26 November, 1880, distinguishes confraternities into two classes :

(1) *In a strict sense.* Those that have a more severe organisation, and, imposing a certain number of obligations, form bodies or colleges entirely constituted and homogeneous. Such are the confraternities which prescribe a period of probation, a solemn reception, a habit, &c.

(2) *In a wide sense.* Those that have more simple rules.

3. For a confraternity to enjoy its privileges it must be canonically erected and placed under ecclesiastical inspection.

4. By common law only bishops have the right to erect confraternities. By privilege certain religious can do the same. The right is so personal to the bishop that the vicar general needs a special delegation before he can act ; and the S.C. of Indulgences, 18 August, 1868, orders vicars capitular ' to abstain from erecting confraternities, from approving their statutes, from giving letters testimonial and the requisite consent for their aggregation.'

5. No special form is required for the episcopal erection ; but they are obliged to observe the general conditions the Church sets for the erection of these pious associations. Thus :

(1) The Chancery cannot make any tax, even in the shape of alms, for the decree of erection, though it can be repaid for any expenses incurred.

(2) Two confraternities of the same name and end can now be erected without, as formerly, their being separated by the distance of at least one mile. The only condition is that they cannot both be in the same locality.

S.C.C.  
Indul.  
31 Jan.  
1893

(3) The Blessed Sacrament Confraternity can be erected in every parish church.

6. Certain of the regular orders, as the Trinitarians, the Friars Minor, the Conventuals, the Carmelites, Augustinians, Servites, and Jesuits can erect certain confraternities anywhere ; but under pain of nullity they are bound to observe the regulations laid down by Clement VIII., Constit. *Quaecumque*, 7 December, 1604, and the decree *Ad religionis*, 8 January, 1861. Hence—



(1) They can erect in a church only one confraternity of the same name and end.

(2) It must be done with the consent of the ordinary and with his letters testimonial.

(3) There must be an express and special communication of the privileges given by name to the order.

(4) The statutes of the confraternity must be examined and approved by the ordinary of the place, and they can be altered by him. But if they contain practices approved of by the Holy See these must be retained; therefore he cannot modify statutes approved of by the Holy See.

(5) The spiritual favours attached cannot be promulgated until the ordinary has had knowledge thereof.

(6) No tax may be made for the letters of erection or of aggregation; and for parchment, time, postage, &c., not more than 30 lire (about £1 4s.) be accepted.

(7) All these provisions must be faithfully observed under pain of nullity; and superiors and their delegates who infringe are *ipso facto* deprived of their offices, and are rendered incapable of exercising others, and their absolution is reserved to the Pope.

7. The same laws apply to aggregations to archconfraternities.

8. A decree of the S.C. of Indulgences, 13 April, 1878, prescribes that, in general, persons who wish to be received into a confraternity must present themselves personally; but another decree, 26 November, 1880, modified the general rule with the following exceptions:

(1) Local confraternities cannot validly receive members who are not on the spot.

(2) Universal confraternities can, with certain exceptions, only receive those who present themselves personally before those who have the delegated or sub-delegated power of receiving.

(3) While no general exception is allowed, yet, in the case of confraternities organised as colleges, their rulers and delegates can, in particular cases, dispense with the personal attendance of those who desire to be admitted.

(4) Confraternities, who have no set form of reception, can receive the absent, but only with their consent both to admission and to the obligations incurred by members.

(5) But the present decree continues the faculty of receiving absent persons to those confraternities whose statutes authorise such admission.

9. As regards the bishop's consent and letters testimonial, it is

not enough for him to write on the deed of erection, *Vidimus et consensimus* or other equivalent phrase.

10. A confraternity that is properly organised has special canonical privileges. If it be erected in a parochial church it depends upon the parish priest for the non-parochial functions; but if it be in another church or chapel it is free for these functions, and can celebrate them without the leave or intervention of the parish priest.

11. In processions precedence goes by the date of establishment in the parish; but at processions of the Blessed Sacrament that confraternity has always precedence.

S.C.C.  
24 July,  
1886

12. The bishop has the rights of visitation over confraternities in his diocese; and his consent is necessary for the disposal of their revenues in pious works and for the alienation of their immoveable property; this also requires the leave of the Holy See.

Trent,  
Sess. xxii.  
cap. 8, d. r.

## CONGREGATION OF BROTHERS

1. The rules affecting the relations of these congregations with the diocesan bishops are laid down in the Constitution *Conditæ a Christo* of Leo XIII., 1900, and can be found in the article on NUNS (*q.v.*), saving such clauses which by law are confined to females only, *e.g.* the episcopal examination before clothing and profession.

2. The regulations concerning the use of the sacraments and the manifestation of conscience (*q.v.*) are also to be found under the same head.

## CONGREGATION OF PRIESTS

1. Congregations of priests under simple vows have their relations with the diocesan bishops regulated by the Constitution *Conditæ a Christo* of Leo XIII., 1900.

2. For the general scope of that constitution see under article NUNS.

3. The special clauses affecting sacerdotal congregations are as follows:

If the religious ask to be promoted to sacred orders the bishop, acting in his own diocese, will take care only to admit them on the following conditions:

(1) That the aspirants be presented by their superiors.

(2) That everything prescribed by law concerning dimissorials and testimonials be observed.

(3) That the aspirants have a title of sacred ordination or are at least lawfully exempt.

(4) That they study theology according to the decree *Audito admodum* of 4 November, 1892.

4. The superiors of the congregation alone, not the bishop, take cognisance of what concerns the conscience, the discipline, and the material organisation of the house.

5. Congregations of priests are not bound by the decree *Quem admodum* concerning the manifestation of conscience.

## CONGRUA

1. The *Congrua* is the retribution paid to a parish priest or vicar for his honest support.

2. It is due to all rectors of churches having the care of souls, to their vicars and coadjutors.

3. The *Congrua* is due from the income of the Church, and it has to be paid *de iure communi*. Hence it matters not whether the cleric have private means of his own or not; the *Congrua* is the retribution for work done.

4. The *Congrua* should be fixed.

5. Stole dues being uncertain are not to be considered in estimating the *Congrua*.

6. The *Congrua* should be such as will suffice decently for the necessities of the priests; and it depends on times, places, and persons. The amount has to be determined by the judge, who is bound to consider the situation, the income, the work, and the ordinary and extraordinary charges on the church.

7. The Council of Trent gives directions to bishops to arrange the *Congrua* in the way most convenient.

## CONSANGUINITY

1. Consanguinity is a relationship which arises from carnal propagation.

2. Consanguinity can affect persons descended from a common *stirps* in two ways :

(1) By immediate generation or in the direct line, either ascending or descending; *e.g.* father and child.

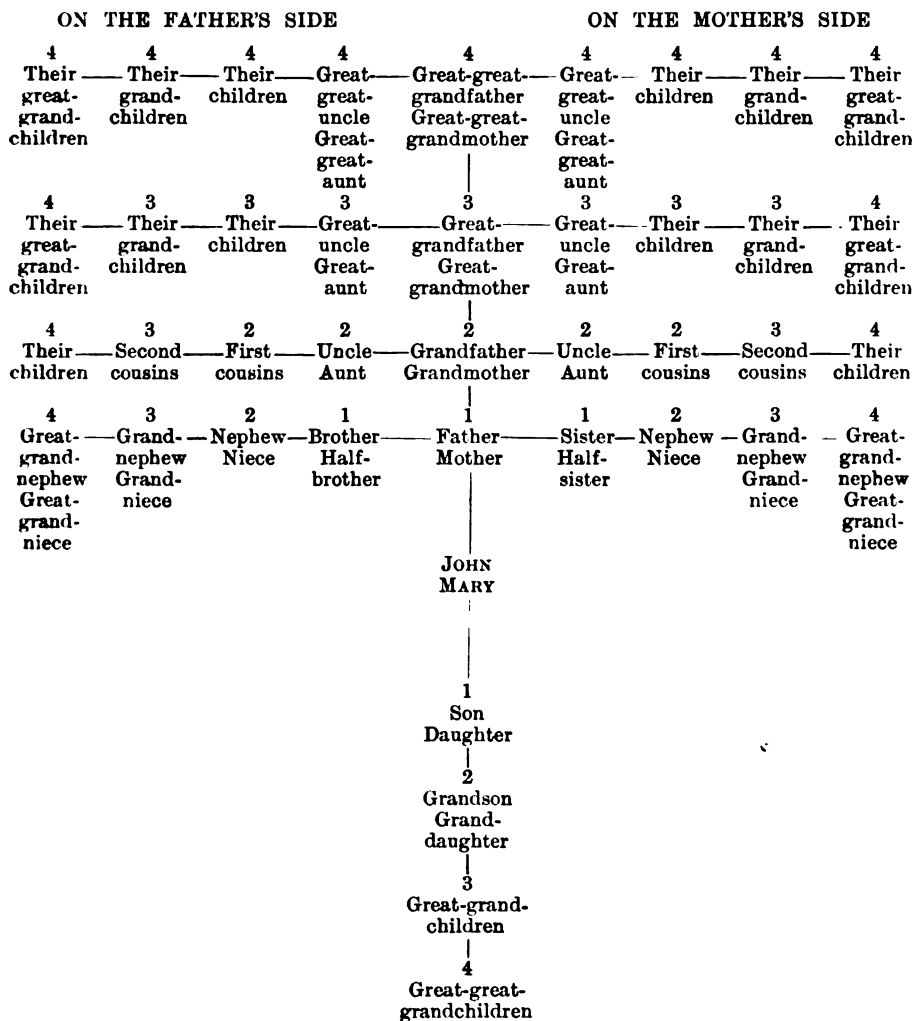
(2) By mediate generation or in the transverse or collateral line, either equal or unequal, *e.g.* brother and sister. The transverse line is equal if the collateral persons be distant by an equal

Trent,  
Sess. vii.  
c. 5; Sess.  
xxi. c. 4;  
Sess. xxiv.  
c. 13, d. r.

number of degrees from the common *stirps* ; it is unequal if the number of these degrees be unequal.

3. Consanguinity in the transverse line is a diriment impediment (*q.v.*) up to the fourth degree. But by a *Motu proprio* of Paul III. for American Indians the impediment ceases at the second degree.

TABLE OF CONSANGUINITY



4. In the direct line, ascending or descending, consanguinity is a diriment impediment *ad infinitum*.

5. For computing the degrees of consanguinity the following rules are to be observed :

(1) In the direct line, both ascending and descending, the number of degrees equals the number of persons after subtracting the *stirps* ; e.g. father and son are in the first degree, uncle and nephew in the second.

(2) In the transverse line, if equal, the number of degrees is reckoned according to the number of persons included on either side furthest from the *stirps* ; e.g. brother and sister are in the first degree ; father's brother's child and cousin-german on the mother's side are in the second, and their children are in the third.

(3) In the transverse line, if unequal, the number of degrees is reckoned according to the number of persons included in the side furthest from the *stirps*. Hence father's brother and nephew, or son and father's sister, are relatives in the second degree.

6. Consanguinity may be twofold and come from two sources :

(1) From two *stirpes* ; e.g. two brothers marrying two women who are cousins : the children will be related in the second degree on the father's side and in the third degree on the mother's.

(2) From one *stirps*, but when the descendants intermarry. Hence where there is a double consanguinity there is a double impediment which must be expressed in the petition for dispensation.

7. Consanguinity in the direct line nullifies marriage by the law of nature.

8. According to the more probable teaching no consanguinity in the transverse line affects the validity of a marriage by the law of nature. But a marriage between brother and sister has never been dispensed by the Roman Pontiff.

9. As regards marriages of unbelievers, when one or both are converted, it is to be held that marriages contracted within the first degree of the right line are invalid ; in all others the Holy See has to be consulted.

*Cf. S.C.C.*  
14 Dec.  
1793

## CONSECRATION

1. The consecration of a church is the dedication to divine worship made by a lawful minister with a special rite and the use of holy chrism for the end that there the faithful may duly practise the rites of religion.

2. The diocesan bishop is, by common law, the only lawful consecrator of a church, and this power he cannot delegate to a simple priest.

3. The church must be blessed *inter missam*, but on any day.

4. It cannot be consecrated until its competent income be ensured.

5. A church wholly or in greater part destroyed and rebuilt needs a fresh consecration, but not if the reparations take place successively ; for it continues to be morally the same edifice.

6. In additions to the older building, if these be smaller than the original edifice no consecration is needed.

7. A church once consecrated can be defiled in four ways :

(1) By a voluntary injurious and gravely sinful shedding of human blood.

(2) By voluntary suicide or murder.

(3) By criminous, voluntary, and notorious *effusio seminis humani* in any way by any person *extra necessitatem*.

(4) By the burial of any excommunicated person or unbeliever. The mere burial of undenounced, though otherwise notorious, heretics does not cause defilement.

8. The effects of such defilement are :

(1) The church cannot be used before it be reconciled and the cause of the defilement be removed.

(2) Before reconciliation no dead can be buried therein.

(3) Nor can mass or divine service be celebrated.

9. If the church be defiled the adjoining cemetery (*q.v.*) is also counted as defiled.

10. The reconciliation of either is to be done by the diocesan bishop or by his commission.

11. The fast on the eve of consecration is of strict obligation as regards the consecrator and those who ask for the consecration.

S.G.R.  
19 July,  
1780 ;  
12 Sept.  
1840  
12 Sept.  
1857 ;  
3 May,  
1866

12. In a church not yet consecrated, but only blessed the altar can be consecrated by itself ; but the church cannot be consecrated without the altar being done at the same time.

## CONSECRATION OATH

1. Bishops are obliged at their consecration to take an oath of fidelity to the Pope. In this they also swear that they will be zealous in the discharge of their duties.

2. The bishops of England add, with the leave of the Holy See, the following clause to the form of the oath as contained in the *Pontificale Romanum*.

‘ Each and all of these provisions I will faithfully observe,

with more readiness because I know that nothing is therein contained which can be contrary to the allegiance due from me to his Gracious Majesty King Edward and to his successors in these realms.'

3. The bishops of England also omit, with the leave of the Holy See, the word *persequar*.

4. This oath is taken also by archbishops on receiving the Pall (*q.v.*); and English metropolitans add the above clause and make the same omissions.

### CONSERVATOR

1. A conservator is a judge appointed by the Pope to preserve the rights and privileges of certain bodies of persons against manifest injuries or violences without judicial investigation.

2. Only prelates, or dignitaries, or personates, or canons can act as conservators.

3. Benedict XIV. states that they must be either synodal or pro-synodal judges.

4. Once lawfully deputed for five years they cannot be moved or changed without a lawful cause to be approved by the Apostolic See or the ordinaries of the places.

5. Conservators can defend regulars from manifest injuries and violences when they are turned out of their possessions and prevented from enjoying their own goods.

6. Regulars can choose conservators for themselves.

7. Conservators cannot delegate their powers.

8. But Propaganda, 3 February, 1640, forbade religious of any kind in missionary countries to choose conservators; for the avoiding of scandals, all differences concerning rights and privileges have to be taken to the Holy See, which always preserves each one in his own right.

### CONSTITUTIONS

1. Constitutions are of two kinds :

(1) Apostolic letters which decree something in a permanent mode for the whole Church or for some part of it. These are of two kinds :

*a.* Dogmatic, like the Constitution *Pastor Aeternus* defining the institution of the primacy in blessed Peter, its perpetuity in the Roman Pontiff, its force and the infallible *magisterium*.

*De  
Synodo,  
lib. iv.  
c. 6, n. 3*

S.C.C.  
12 Sept.  
1620

b. Disciplinary, like the *Apostolicae curae*, which pronounced on the question of Anglican orders.

(2) The special laws which regulars apply to their rules as explanations and developments. Also the framework of a religious society as distinct from the regulations for individual behaviour.

2. Pontifical Constitutions have force in themselves, and do not require the acceptance of bishops before they become law.

3. Religious Constitutions require Pontifical approval before they are permanently recognised.

### CONTESTATION

1. The contestation is one of the judicial acts or proceedings of the actual trial by which the points in dispute are clearly set forth. It is the plea or joining of issue. The plaintiff makes his accusation before the judge in court, and to this the defendant must plead an answer. If he admit the accusation there is no contestation; but if he deny, either in whole or in part, and claim to refute the charge, then the cause is said to be contested.

2. As a rule contestation must take place in every ecclesiastical trial. In formal or ordinary canonical trials it is necessary for the validity of the process. There are, however, exceptions:

(1) In summary trials, formal contestation is not necessary; but it may take place.

(2) In appeals (*q.v.*); because the contestation made in the lower court is sufficient.

(3) In notorious causes which require no formality of the kind.

(4) In causes before the Holy See.

(5) In all causes where no libel (*q.v.*) is required.

In these cases, after the proceedings have begun, the first judicial act is considered as, and has the force of, the contestation.

3. It is worth while noting the legislation of the Instruction S.C.E.R. of 11 June, 1880:

(1) 'Then the contestation of the criminous deed is to be approached, and at the same time the proofs exhibited are to be brought forth by which it is sought to be shown that the accused is guilty and should be punished by canonical penalties. (xxvi.)

(2) 'By this arrangement the *reus* in court can know everything which is to be brought against him; he then can both reply to them and defend himself by law.' (xxvii.)



4. If the contestation be not required absolutely before the Commission of Investigation, it is necessary that the point or accusation should be defined and stated before the trial begins. Smith says it would be well 'for the vicar general or other priest acting as the bishop's representative to draw up the statement or charges against the defendant, to be read before the Commission of Investigation in this manner :

(1) 'First let him give, in his paper, a summary statement of the charges and specifications, or if there be a question of civil causes, an outline or epitome of the case.

(2) 'Next let him take up the charges and specifications, one by one, and fully and clearly prove them, by the testimony of witnesses, documents, &c.

ii. p. 220

(3) 'The accused or the defendant should likewise, in his defence before the Commission, clearly and categorically answer the official's statement.'

### CONTUMACY

1. Contumacy, in forensic matters, is contempt of court; and it is found, in general, in any act of stubborn or obstinate disobedience to the order of a lawful judge. Simple disobedience does not induce contumacy, but it must be disobedience which implies contempt of authority, *e.g.* when a person has been summoned three times (or twice) by simple citation (*q.v.*) and refuses to appear, he is then guilty of contumacy; or if he refuse to put in an appearance after the expiration of the period fixed by a peremptory citation. Contumacy is also incurred by any wilful and stubborn disobedience to a lawful order of a court during any part of the proceedings.

2. As regards contumacy in respect of a citation it must be noted that the law recognises two forms, viz. :

(1) *True contumacy*, when, after personal service of the citation, it is proved, or where it is otherwise *certain*, that it has reached him, and the summoned fails to appear and has no lawful excuse.

(2) *Presumptive contumacy*, when it is doubtful whether the accused have received the citation.

3. All cases of contumacy have to be judicially proved, at least summarily, before any sentence based upon the contempt of court can be proceeded with; and, generally speaking, a judge cannot proceed, except *ex officio*, or with a fine, in declaring anyone contumacious except on the demand of the opposing party;

and unless this demand be made, the opposing party is held to acquiesce in the absence.

4. There are many causes which afford a legal and sufficient excuse for non-appearance, *e.g.*

- (1) Ill-health.
- (2) Important business or other serious occupation.
- (3) Summons to a higher Court.
- (4) Bad weather.
- (5) Danger in the places to which the person is cited.
- (6) The want of an advocate.

These and the like reasons form a valid excuse ; and if they be pleaded, and the judge in spite of them pronounces sentence, his judgment is null and void ; but if he do not know of these excuses, and passes sentence on account of the apparent contumacy, his sentence must be revoked and the *status quo ante* restored.

5. Contumacy may befall either plaintiff or defendant, and each has its penalty.

(1) If the plaintiff once have lodged his accusation in Court, he can be forced to proceed under penalty of being punished for calumny. If he do not appear on the day appointed, he can be cited ; and in due course if he refuse to attend to the first and second citations, after contumacy be proved against him, he is to be condemned to pay all the costs. After the third refusal, the defendant can demand that the judge go on with the case and pronounce definite sentence ; or he can insist that he himself be definitely absolved from the accusation ; for *Actore non probante reus absolvitur*.

(2) A defendant guilty of contumacy is held by some canonists to have equivalently confessed his guilt, and therefore, without further proof or trial, he may be condemned. But other canonists of great authority maintain that neither true nor presumptive contumacy is equivalent to a full proof of crime, and that neither constitutes a juridical confession or conviction of guilt. The only effect is, that contumacy once proved, the trial can go on in the absence of the accused.

6. The chief penalties for true or presumptive contumacy are :

(1) The judge is allowed to proceed to trial even to the detriment of the contumacious.

(2) It constitutes a strong *presumption* of guilt. But this is not enough to secure a sentence, and no amount of additional presumptions without definite and positive proof will secure a conviction.

(3) It is subject to a pecuniary fine at the discretion of the judge.

(4) It also induces excommunication, which should be resorted to only if other means fail. If the contumacious person remain for more than a year under the censure, he is considered to be guilty of heresy, and can be proceeded against as a heretic.

(5) It causes the loss of the right of appeal. This only holds good in cases of *true* contumacy.

7. The Instruction of S.C.E.R. 11 June, 1880, states that true contumacy is to be proceeded against. Therefore the common law holds in this matter.

8. In places where there is a Commission of Investigation, as in England and in the United States, where the Instruction of 1878 is in force, and where the later or Instruction of 1884 binds, it is clear that when contumacy, true or presumptive, be proved, the judge, auditor, or commission cannot omit, in the absence of the accused, to hear the cause. The trial must progress in due form, and the verdict must be given on the whole case. The Court must, as said above, find that the person is contumacious, and then proceed with the trial as though he were present.

9. In ordinary or formal trials, whether civil or criminal, canonists usually hold that the judge cannot, *as a rule*, go on with the trial and pronounce sentence in the case of contempt, except when the contumacy takes place after the contestation (*q.v.*). In summary trials, where contestation is not needed, the judge can proceed. Moreover, there are cases in an ordinary trial where a judge can proceed, viz. :

(1) When he proceeds *ex mero officio* to a special inquiry and not at the request of another.

(2) In criminal charges where the cure of souls is concerned.

10. When there is question of depriving clerics of their offices and benefices, Schmalzgrueber holds that the order to be followed is this :

(1) The contempt is to be punished by excommunication.

(2) The trial is to be suspended for a year.

(3) If the defendant after that time do not appear the trial is to be resumed and sentence given according to the evidence.

11. But where there be grave reason to the contrary, and where the proceedings, *e.g.* of the Commission, be not a formal trial but be summary, and *per viam inquisitionis*, the year need not elapse before sentence be given, the more particularly as no formal contestation is required.

## CONVENT

1. For the canonical erection of a convent it is, says Benedict XIV., the received opinion that, both in and out of Italy, the leave of the Apostolic See is required besides that of the local bishop.

2. Clement VIII. by his Constitution *Quoniam ad instantiam* (1603) forbids bishops to give leave to mendicants to open houses without summoning and hearing the superiors of other convents already existing in the place, and Gregory XV., *Cum alias* (1622), extended this regulation to houses of non-mendicants, ordering at the same time that no house should consist of less than twelve members. Innocent X. by the Constit. *Instaurandae* (1651) provided that houses occupied by religious men in number less than six shall be altogether under the power of the bishop.

3. These Constitutions are to be observed outside Italy, and apply to all orders.

Urban  
VIII.  
30 Jan.  
1638

4. The consent of the bishop is necessary according to the Council of Trent :

‘Nor shall any such places be henceforth erected without there being first obtained the permission of the bishop in whose diocese they are to be erected.’

Sess. xxv.  
c. 3

5. As regards the action of the bishop the following has to be noted :

(1) He is not obliged to summon the other local superiors of convents within four (Italian) miles if it be clear to him that the proposed monastery will not be to the detriment of others.

Gregory  
XV.  
*Cum alias*

(2) It is the more probable opinion that amongst those to be consulted are parish priests. But their consent, be it noted, is not required.

(3) As regards the number of six in a house, Leo XIII. decreed that by privileges ‘regulars dwelling in residences on the mission are exempted from the jurisdiction of the ordinary no less than regulars living within cloisters, except in cases expressly mentioned by law &c.’

Constit.  
*Romanos  
Pontifices*,  
1881

(4) The S.C.P.F. has several times decreed that for the erection of churches and colleges, even in missions where religious orders possess houses and residences, the permission of the Holy See and of the local ordinary is absolutely necessary ; and Leo XIII. speaks not only of colleges but also of schools, and forbids regulars to convert existing institutions to other purposes except in cases of mere internal government and regular discipline.

(5) The bishop cannot withhold his consent unreasonably.

(6) When the matter is the reassumption by a community of rights which have been withheld or allowed to be in abeyance through persecution or injury, or the mere translation from one part of the city to another, the leave of the Holy See does not seem necessary, as here is no new foundation.

6. As regards the power of the bishop over houses of religious women *see* under the title of NUNS.

## CONVERTS

1. In the matter of converts great care is necessary that they should be properly instructed before the actual reception. The instruction should be solid and thorough, and adapted to the capacity of the individual. The course of instruction, joined to the observance of Catholic life and practices, should, unless grave necessity arises, be prolonged until such time as the person be well grounded in faith and trained in observance.

2. In the actual reception attention must be paid to the general legislation as well as to the particular regulations of the diocese.

3. The Holy Office has issued several Instructions on the subject:

(1) 'In the conversion of heretics the first thing to be inquired into is the validity of the baptism received in heresy. A diligent investigation must be instituted, and if it be found that no baptism has been given, or that which has been given was null, then the person must be baptized absolutely; but if after investigation there remain a probable doubt as to the validity of the baptism, then it must be repeated *sub conditione*. But if it be proved to have been valid, then the person is only to be received by abjuration or profession of faith. There is, therefore, a threefold method of proceeding in reconciling heretics :

(a) 'If baptism be given absolutely, no abjuration or absolution follows, because the Sacrament of Regeneration washes away everything.

(b) 'If baptism be given conditionally, then the following order is to be observed : (a) Abjuration or profession of faith ; (b) conditional baptism ; (c) sacramental confession with conditional absolution.

(c) 'If the baptism have been judged to be valid, then only the abjuration or the profession of faith, followed by the absolution from censures, is necessary.'

*Cf.* Instruction  
S.C.S.I.  
20 July,  
1859

(2) By another Instruction the same Holy Office decrees :

'In the conversion of heretics, coming from any place or from any sect, an inquiry must be made as to the validity of the baptism received in heresy. Therefore in each case an examination is to be instituted. If it be found that there was no baptism, or that it was invalid and null, they have to be baptized absolutely ; but if, after an investigation conducted according to times and places, nothing be discovered either for the validity or the invalidity of the baptism, and therefore there remains a probable doubt as to the validity, the persons are conditionally to be baptized *in secret*. While if it be proved that the baptism was valid, then they are to be received only by abjuration or profession of Faith.'

*Cf. Instruction, S.O.S.I. 20 Nov. 1878*

(3) As to the abjuration the Holy Office orders that adults under fourteen years of age before being admitted to the sacraments have to make a profession of faith only. Over fourteen years of age a formal abjuration of the sect to which they belonged is also required.

8 March, 1882

4. The profession of faith mentioned above is not the Creed of Pius IV., but is a special one prescribed by the Holy Office for heretics on their conversion.

Synod of Maynooth, 1875, n. 223

5. The First Council of Westminster decreed :

(1) 'Converts, also, must be urged not to neglect this grace, and not unnecessarily to defer it for a remote time. xvii. 3

(2) 'The general confessions of converts to the faith especially must not be put off for a long time ; but if they be sufficiently instructed, and moved with sincere sorrow of heart ask for forgiveness, the minister of a most clement God should mercifully impart it to them. As to the more ignorant kind of converts the priest should take care that they are well instructed before he admits them to the sacraments.

xix. 4

(3) 'But inasmuch as amongst those who are to be ordained there may be often found those who are either converts from heresy, or born from converted parents, or who have from other causes incurred irregularity, the bishop should make careful inquiry, so that if by chance among those to be promoted there be found any noted with such stain he may be freed from it before ordination.'

xxi. n. 2

## CORPUS IURIS CANONICI

1. The *Corpus Iuris Canonici* consists of the following collections :

(1) The *Gratiana* (q.v.), to which are added by way of appendix the penitential causes and the causes of the Apostles.

(2) The *Gregoriana* (q.v.), or the five Books of Decretals by Gregory IX.

(3) The *Sexta* (q.v.) of Boniface VIII.

(4) The *Clementina* (q.v.).

(5) The *Extravagantes* (q.v.) of John XXII.

(6) The *Extravagantes Communes*.

2. In some editions there are added also :

(1) The *Septima*, a collection of decretals by Peter Matthew, of Lyons.

(2) The *Institutiones* of Lanceloti.

3. The way of quoting from the *Gratiana* is as follows :

(1) The *first* part of the *Gratiana* is quoted thus : C. *Audite*, dist. 34, signifying the thirty-fourth distinction and the sixth canon which begins with the word *Audite*. Sometimes the catchword is omitted, and the members of the distinction and the canon are alone used, e.g. C. 6, dist. 34. Sometimes both the catchword and the numbers of canon and distinction are used, e.g. C. *Audite* 6, dist. 34.

(2) The *second* part of the *Gratiana* is cited C. *Omnibus*, c. 2, q. 5, which signifies the fifth question of the second cause and the canon beginning with the word *Omnibus*. Sometimes in place of the catchword its number is used, e.g. C. 19, c. 2, q. 5. There is a special way of citing Cause 33. The third question of this cause treats of Penance, and is divided into seven distinctions ; and therefore it is quoted thus : C. *Perniciose, de Poenit.* dist. 1 : that is, the canon *Perniciose* of the first distinction in the tractate *de Poenitentia*.

(3) The *third* part of the *Gratiana* is thus cited : C. *Triforme, de Consecr.*, dist. 2 : that is, canon *Triforme* of the second distinction in the tractate *de Consecratione* ; or sometimes the number is substituted for the catchword, e.g. C. 22, *Consecr.* dist. 2.

(4) The penitential canons and the canons of the Apostles are quoted C. *Poenit.* 14 and C. *Apost.* 15.

4. Quotations from the *Gregoriana* are made by indicating the *Capitulum* by its initial word, then the title of the book ; then

sometimes the word *extra* (or X) or *supra*, which warns the reader that the text is to be found out of the *Gratiana*, e.g. Cap. *Quotiens Extra* (or X) *de Pactis*. In looking down the alphabetical list of titles, *de Pactis* will be found to be title 35 of book 1 of the decretals. Sometimes the *extra* (or X) or *supra* is left out and the quotation is made thus : Cap. *Quotiens, de Pactis*.

5. Quotations from the *Sexta* have, at the end, the form, *in* 6°, which indicates the decretals of Boniface VIII., e.g. C. *Gratia, de Rescriptis* in 6° : that is, the *capitulum* beginning *Gratia* in the title *de Rescriptis* in the *Sexta*. In looking down the alphabetical list of titles the index shows that this is the third title of the first book of the *Sexta*.

6. The *Clementina* is cited thus : *Clem. Multorum, de Poenis* : that is, the *Capitulum Multorum* of the title *de Poenis* in the *Clementina*. The index tells us that the title *de Poenis* is the eighth of the fifth book of the *Clementina*.

7. The *Extravagantes* of John XXII. are cited as *Extrav. Ecclesiae, de Maior. et Obed.* : that is, the *Capitulum Ecclesiae* in the title *de Maioritate et Obedientia*.

8. The *Extravagantes Communes* are quoted in the same way with the addition of the word *Communes*, e.g. *Extrav. Comm. Etsi, de Praebend. et dig.*

9. The *Septima* is quoted as the *Sexta*, but instead of *in* 6° there is put *in* 7°.

10. The institutions of Lanceloti are rarely quoted, as they have no authority.

11. The glosses, sometimes quoted, are short notes added by unknown hands to the text. Those within the lines are of the earlier origin ; while the later ones are found in the margin of the MSS. They have an interpretative value.

12. Of the printed editions of the *Corpus Iuris Canonici* there are several without any date. The first dated one is that of 1471. Pius IV. undertook the revision, and the work was continued under Pius V. and Gregory XIII. ; the authentic edition appeared in Rome in 1582.

## COSTS IN ECCLESIASTICAL TRIALS

1. Although in theory it would seem advisable that the administration of justice should be free, yet it is found in practice necessary that a portion at least of the expenses should be borne by those directly concerned in the litigation. The Church, however,



provides that all her judges should be paid by the diocese, so that they may be independent in passing judgment; and she also provides an advocate for those who plead in *forma pauperis*, lest an innocent man be condemned or suffer loss.

2. The expenses which have to be paid by the litigants are :

(1) Those incurred by each party in the prosecution or defence. These include lawyers, witnesses, travelling, &c.

(2) Those incurred by the actual trial; such as the fees of the official notaries for copies of decrees or orders of the Court, of messengers for the service of citations, &c.

(3) Damages that may be decreed against the loser of the action.

3. Each party before the sentence bears his own costs and half the cost of documents that concern both parties. These notarial costs must be moderate and may be taxed by the judge. The exception to the rule is when one of the litigants, especially in a criminal case, is notably poor.

4. During the hearing if one of the litigants by disobedience to citation, by contumacy, or by frivolous interposition, cause delay and expense to his opponent, he is at once liable to be condemned to pay any costs that have been caused thereby.

5. After the trial is over, the loser is condemned to pay all the costs, as he is held to have entered on the action temerarily or maliciously. In criminal cases, a defendant cannot be held to be rash in defending himself, but the accuser, official or private, if he fail altogether to substantiate his charges, is considered to have been either temerarious or malicious and therefore guilty of presumptive calumny.

6. If it can be proved, however, that the loser acted throughout in good faith, the judge divides the costs equally between both parties; and the loser does not have to pay the victor's costs, because no wilful injury has been done.

He is held to have had a just cause for proceeding :

(1) When he has produced half proof, *e.g.* one good witness.

(2) When he has a probable opinion in his favour.

7. The ecclesiastical judge is bound, at the express or implicit wish of the winning party, to condemn the loser to pay the costs if it be shown that he acted carelessly or maliciously. If no request be made, the judge can *ex officio* condemn the rash litigant to pay costs, but he is not bound to do so.

8. The costs must be taxed as moderate and necessary; and they do not include any unnecessary outlay. The winning side

is obliged to show the list of expenses to the judge, who revises the bill and approves or disapproves of the items.

9. A litigant also can be cast in damages if he can be proved to have acted through malice or has been disobedient to citations or vexatious in delays.

10. The questions of costs and damages are subject to appeal if either party consider it necessary. The loser may be condemned to pay also the costs of the higher Court if it can be shown that as plaintiff or defendant he entered an appeal rashly or maliciously.

11. In the criminal cases of ecclesiastical appeal it is difficult to imagine that an appellant, acting in self-defence, is rash in making an appeal.

12. The expenses or damages need not be refunded by one litigant to the other until the sentence of the Court has become *res iudicata*. Smith ii.  
pp. 460-  
465

## COUNCIL

1. A council is a gathering of prudent clerics under the authority of a prelate for transacting business concerning the welfare of the Church on public necessity.

2. There are various kinds of councils.

(1) General council of all the bishops in union with the Holy See and under the headship of the Pope.

(2) National council of the bishops of a nation under the presidency of the primate or senior metropolitan, or of an apostolic delegate (*q.v.*).

(3) Provincial council of the bishops of a province under the presidency of the metropolitan or senior bishop.

(4) Diocesan council, where the bishop summons his clergy to receive his decrees.

3. The provincial councils and the diocesan councils are sometimes called synods. The latter is only improperly called a council, inasmuch as there is no definitive discussion on the decrees.

## COURTS CHRISTIAN

Courts Christian is a term used in English law to denominate the ecclesiastical courts, as the doctrines and practice of Christianity are not only the subject matters of these courts, but they have to deal with Christians in the spirit of Christianity: that is, with justice, mercy, and truth.

## CREMATION

1. Cremation is the disposal of corpses by burning. The practice is against Christian tradition ; and, as the guardian of this tradition, the Church opposes herself to the practice. Not absolutely, as though there were anything inherently immoral in the practice, but relatively, that is to say, on account of her past history and on account of the circumstances which have, in some countries at least, accompanied the practice. Putting aside any hygienic reasons, which appear to be greatly exaggerated, it is undeniable that the great advocates of cremation have been those who are opposed actively to the Catholic Faith ; hence, while cremation is held by these to be a protest against the Church, and a mark of contempt for her authority, it is obviously impossible that she should tolerate. The legislation of the Church is as follows :

2. The Holy Office declared :

*Feria iv.*  
19 May,  
1886

(1) That it was not lawful to become members of cremation societies ; and if these were affiliated to the masonic sect the members incurred all the penalties attached to a secret society.

(2) That it is unlawful to order one's own body or those of others to be burnt. The Pope approved and confirmed this decree.

*Feria iv.*  
15 Dec.  
1886

3. The same Holy Office refused ecclesiastical burial to those who choose cremation for themselves and die, certainly and notoriously, in these dispositions. In cases of doubt or difficulty the judgment of the ordinary must be sought. But those who are cremated, not by their own will but by the choice of others, are allowed to have the Church's service at the house and at the church, but not at the place of burning ; and, in order to avoid scandal, it is to be made known that the cremation has not been by the will of the deceased.

*Feria iv.*  
27 July,  
1899

4. The Holy Office, in reply to some questions submitted by the Archbishop of Friburg, has also determined the following :

(1) If Catholics, who are not freemasons and not led by the principles of that sect but by other reasons, do not, when admonished, withdraw their order for cremation, it is not lawful to administer the last sacraments to them.

(2) If, through their own fault, the bodies of Catholics be cremated without any directions on their part, it is not lawful to celebrate public masses for them.

(3) It is not lawful to co-operate formally, either by order or advice, in the custom of cremation, but material co-operation may be tolerated under the following conditions :

(a) That cremation be not taken as an act of adherence to the masonic sect.

(b) That nothing be done which, *per se* and directly, expresses reprobation of the Catholic doctrine and approbation of the sect.

(c) That Catholic officials and workmen are not made to take part in the act out of contempt of the Church.

## CRIME

1. Crime is a wilful and exterior violation of divine or human law and is prejudicial to society. Hence the difference will be seen between crime and sin which may be only internal and prejudicial only to the individual.

2. There are several divisions of crime according to the Tribunal to which they are amenable.

(1) Ecclesiastical crimes, such as apostasy, heresy, schism, profanation of the sacraments, &c. These belong exclusively to the Ecclesiastical Courts.

(2) Civil, such as murder, theft, &c. These belong to the secular courts, unless the privilege of the *forum* takes them before the Courts Christian (*q.v.*).

(3) Mixed, such as sacrilege, perjury, blasphemy, crimes against chastity, &c. These, as far as they are prejudicial to religious society, belong to the ecclesiastical *forum*; and as far as they are hurtful to secular society they belong to the civil tribunal.

3. Crimes are also classed according to the person who commits them :

(1) Crimes of the clergy.

(2) Crimes of the laity.

4. They are also classed according to notoriety into :

(1) Occult crimes, *i.e.* which cannot be proved.

(2) Quasi-occult crimes, *i.e.* only known to a few persons and difficult of proof.

(3) Public crimes, *i.e.* known to many and provable. This last is subdivided into :

(a) Public in the first degree, when it is known at least to two persons.

(b) Famous, when it is of common report, based on strong conjectures and common to persons who are worthy of faith.

(c) Manifest, when it is so certainly known to a number of persons of good faith that the majority of persons can be said to know it.

(d) Notorious, when the evidence is such that the matter cannot be hidden in any way. This kind of public crime may have notoriety (*q.v.*) of law, of fact, or of presumption.

5. A crime may be public in one place and occult in another ; it may also, by lapse of time, lose notoriety and become occult.

6. Crimes may, according to the interests endangered, also be classed into :

(1) Public or social crimes.

(2) Private crimes, which do not directly affect the constitutions or persons of Church or State.

7. In crime, as the matter of judicial process, there is required :

(1) An accuser (*q.v.*).

(2) The accused, or defendant (*q.v.*) or *reus*.

(3) The witnesses (*q.v.*).

(4) The judge (*q.v.*).

(5) The sentence (*q.v.*).

(6) The execution thereof.

## CURATES

1. Curates are those who have a cure of souls ; by a peculiar turn of phraseology in English the word has come to mean priests who assist a rector in his cure of souls. Technically speaking, the curate is the one who exercises the cure, and his assistants are vicars and coadjutors ; but here the term is used in its accepted English sense, *i.e.* assistant priest.

*Cf.* Trent,  
Sess. xxi.  
c. 4

2. The bishop can compel parish priests when they are not sufficient for the work to have as many priests as are necessary for doing the work.

3. The bishop can also give a coadjutor (*q.v.*) to a *parochus* (*q.v.*) when he cannot do his work either on account of chronic ill-health of body or mind, or on account of ignorance. And it belongs to the bishop, not to the parish priest, to judge whether a curate be necessary or not.

Trent,  
Sess. vii.  
c. 5 ;  
Innocent  
XIII.  
Constit.  
*Apostolici*  
*ministerii*

4. The bishop can assign to the curate from the income of the church a *congrua* (*q.v.*). If the income of the church be not sufficient the rector is not to suffer ; but according to the common opinion the bishop, as far as he can, must provide from other sources for the curate.

5. As by common law stole dues belong to the parish priest ; and as it is most probable, being uncertain, that these cannot be reckoned among the fruits of the parochial benefice, so it can

very well be held that the bishop cannot assign these offerings as the *congrua* or part of the *congrua* of the curate. On the other hand, as the Council of Trent says that the bishop can assign a *congrua* to the curate from the fruits of the benefice *vel aliter providere possit*, it may also be held that these offerings may be so assigned; if the *aliter* can be taken to include these uncertain sources of revenue. In any case the custom (*q.v.*) of a diocese will settle the matter.

Sess. xxi.  
cap. 6

6. The appointment of curates *de iure communi* belongs to the *parochus*, not to the bishops. But in English-speaking countries and others they are appointed by the bishop, who determines their salary and changes them. But in both appointments and changes it is well, as far as possible, to act in a manner agreeable to the rector.

7. The Westminster Councils decree :

(1) 'If there be two or more priests in the same mission, we decide that one is to be appointed the first, and he shall attend to the cure of souls and the administration of the church or congregation.

I. West.  
xiii. 6

(2) 'Retributions for masses are the *peculium* of the priest. In like manner where it is the custom, which is a very ancient one in England, to make presents to each priest at Easter and Christmas, these gifts *de iure* belong to them. But let the priest be on his guard lest he incur the suspicion of receiving anything on account of his administering the sacrament of Penance.

II. West.  
viii. 14

(3) 'As to the application of money that comes from stole fees one and the same practice does not obtain throughout the whole Church. . . . The proceeds derived from this source should ordinarily be adjudicated to the priests; though in different places they are distributed in different ways. That distribution seems to be preferred which is most conducive to lighten the burthens of the mission.

*Ibid.* 15

(4) 'Whilst therefore we forbid anything to be asked for (and much more anything to be exacted) before the celebration of baptism and matrimony, and even after the celebration as *de iure*, we leave it to the prudence of the bishops to determine in their diocesan synods what seems best adapted to the customs and state of places.

*Ibid.* 16

(5) 'Assistant priests ought to inform the head priest of each church as often as they leave home even for a day,' and they should not 'be absent on a Sunday or holiday of obligation without the leave of the bishop or vicar general, except in case of urgency,

*Ibid.* x.

in which case the priest on leaving home ought, as soon as possible, to inform the bishop of the said urgency and leave a suitable priest to supply his place.'

III. West.  
xvii. 2

(6) 'Priests ordained under the title of the mission who are in the receipt of stipends from any church or oratory' have to pay the *cathedraticum* (q.v.).

IV. West.  
xi. n. 5

(7) 'Where there are two or more priests at a mission one of them alone, independently of anyone save the ordinary, shall fulfil the office assigned to him, but the others in dependence upon him. The assistants receive, indeed, their faculties from the bishop, but, for the preservation of order, we command them to make use of these only under the direction of the rector of the church; and, hence, in the formula of faculties there should be the following or similar words: "dependently upon the rector of the church to which you are appointed."

*Ibid.* n. 6

(8) 'From the fact, however, that the cure of souls is committed chiefly to the rectors of missions, their assistants should not imagine that they are free from so weighty a burthen: for it is their duty, under the rector, to help him by preaching, by hearing confessions, by teaching children the Catechism, by visiting the sick and administering to them the sacraments, and by fulfilling the other duties of a missionary.

*Ibid.* n. 7

(9) 'The common table in presbyteries is the mark and sign of brotherly charity, which absence lessens, yea, if frequent, completely banishes it. Rarely, therefore, should they take meals elsewhere, much less habitually. "Having food and raiment let us with these be content."'

n. 137

8. According to the Synod of Maynooth (1875) no curate shall incur more than 20*l.* in debt without being liable to censure.

## CUSTOM

1. Custom may be regarded as a fact or as a law.

2. As a *fact*, custom consists in the frequent and continuous acts of a community.

*De Principiis*,  
p. 323

3. As a *law*, custom signifies the effect or obligations produced by these continuous acts. Hence, with Bouix, it may be defined as *Ius per similitudinem alicuius communitatis actuum frequentiam acquisitum*; or with Smith, after Schmalzgrueber: 'An unwritten law obliging persons to do or omit something, introduced by long-continued, great, and public acts of a community, with the approbation, expressed, tacit, or presumed, of its lawgiver.'

I. p. 43

4. The acts must be extended over a period that can be held to be long and continuous. Two or three acts do not induce the frequency necessary for establishing a custom.

5. As custom binds the whole community, it requires that the acts should be those of the community, or at least of the greater part. Hence, as Suarez remarks, the repeated acts of an individual, or even of a family, can never constitute a custom. They can, at the most, only impose a precept.

*De Legibus*, vii. cap. 7 n. 6  
Craisson, I. p. 58

6. The word 'community' is to be taken in a wide sense, and embraces chapters, the diocesan clergy or laity, religious communities or confraternities.

7. There are several divisions of custom :

(1) *Secundum ius*, which either interprets a doubtful law or confirms and carries out the provisions of the law.

(2) *Praeter ius*, which establishes something upon a point where the law is silent.

(3) *Contra ius*, which abrogates the law.

8. Custom is also classed as :

(1) *Universalis*, which has a binding force over all the world.

(2) *Generalis*, which binds a whole province.

(3) *Specialis*, which exists only in certain towns or cities.

9. Another division of custom is into :

(1) *Iudicialis*, which is induced by several similar decisions in the same kind of causes. Two judgments within ten years, provided that no contrary judgment has been given within that time, are sufficient to induce a judicial custom.

(2) *Extra iudicialis*, which comes from a long usage out of court.

10. Canonists also distinguish bad or unreasonable customs and good or reasonable customs. Bad customs may be so *intrinsically* as being contrary to natural or divine law ; or *extrinsically* when the acts themselves are forbidden by law or are evil on account of some unessential circumstances. A custom which is bad intrinsically is an abuse, and can never pass into *ius* ; but one which is only bad extrinsically can become *ius* if the evil circumstances which surround it are removed.

11. There is also a custom *a iure non repulsa*, and one *a iure abrogata, prohibita et reprobata*. Now the law :

(1) Abrogates an existing custom, but without declaring it to be bad or unreasonable. The clause used is : *non obstante quacunq̃ consuetudine*.

(2) Prohibits the future introduction of the custom, but also



without declaring it to be bad or unreasonable. The clause used is : *Nolumus contra hanc legem aliquam consuetudinem valere.*

(3) Reprobates when it declares the custom to be bad and material. The clause is : *Consuetudinem illam penitus improbandes : cum non tam consuetudo quam corruptela merito sit censenda.*

12. Hence it will be seen that custom differs from prescription (*q.v.*); for this can be introduced by private individuals, and concerns private rights, while custom can only be introduced by the community and induces common rights.

13. In order that custom should obtain the force of law, there are four conditions requisite, and these have to be sought in the community, the supreme authority, the custom, and the duration of that custom.

14. On the part of the community.

(1) The *community* can introduce a custom; for it has the power to make laws for its own welfare.

(2) The introduction of the custom must come from the greater part of those competent to give assent; for, as a general rule, only the acts of a majority are binding.

(3) It must be done with due knowledge: that is, a custom cannot obtain through ignorance or error. Thus, as Smith remarks, the impression prevails sometimes that rectors of parishes who are *ad nutum episcopi revocabiles* may be removed by the bishop in such a manner that in no case can they have recourse to the Holy See. Such an idea is altogether erroneous; and, although ignorance or error may excuse, they cannot establish a custom, for the supreme authority does not intend to agree to a custom unless the community intend it to have the force of law.

(4) The acts must be free, not extorted by force or fear; for otherwise the supreme authority cannot be supposed to consent.

(5) It must be established by the evidence of public acts which can be brought under the cognisance of the lawgiver.

(6) There must also be the intention of contracting an obligation if the custom be *praeter ius*. Actions done merely out of devotion do not bring in custom unless the intention of contracting an obligation be known by circumstances; *e.g.* if the custom is constantly observed in spite of no small difficulty.

(7) The acts must not be interrupted before the completion of the customs, even by one contrary act *ex certa scientia*.

15. On part of the Supreme Authority. The consent of the Pope, who is the supreme authority and lawgiver, is, in some sense,

indispensable, so that custom may have the force of law. The Pope may consent :

(1) Expressly : and as soon as he sanctions a custom, whether it be *praeter* or *contra ius*, it obtains the force of law.

(2) Tacitly, when he does not oppose a custom of which he has due knowledge. This tacit consent legalises customs when they are reasonable, and the Pope can easily protest against them. But if, in cases *contra ius*, he be silent only from motives of prudence, such customs do not gain prescription against the law.

(3) Legally. The Pope is said to consent legally to customs when he is, indeed, not cognisant of the custom in question ; but is only considered to consent to it by the general will which he is supposed to have, that all reasonable customs, lawfully prescribed, should be binding. It is the more common opinion that this legal consent is sufficient.

16. On the part of the custom itself. That a custom may have the force of law it is essential :

(1) That it be good and reasonable.

(2) That it be not reprobated by canon law, nor give occasion to sin.

(3) That it be not against the common interests of the community nor subversive of ecclesiastical discipline.

17. On the part of the duration of the custom. Besides being good, a custom must be lawfully prescribed, and legitimate prescription is thus gained :

(1) Customs *praeter legem* gain prescription in ten years.

(2) Customs *contra legem*, according to some canonists, gain prescription also in ten years. Other doctors make a distinction between laws once received and laws which have never been received. In the former case they maintain that forty years are necessary to obtain the benefits of prescription ; and in the latter case ten years. A third school holds that forty years are necessary in every case *contra legem*. The *Rota* requires this period of forty years ; and it may be held safely that a prescription which has not got forty years in its favour is doubtful at least.

18. It is disputed whether good faith be indispensable to prescription *contra legem*. Craisson holds that the negative opinion is the more probable. I. p. 67

19. Custom rightfully introduced interprets law :

(1) Authentically, if it have been lawfully prescribed.

(2) Conditionally, if otherwise.

20. Custom induces law provided that it be clothed with the requisite conditions.

21. It abrogates law in the same circumstances, either :

- (1) Wholly or
- (2) Partially as regards punishment or obligation.

22. It nullifies acts done to the contrary ; but it is a disputed point whether custom can abrogate a law which forbids that such a custom should be introduced. It all seems to depend upon the consent of the prince, who, if he yield to the custom, is supposed to abrogate from the former prohibiting law.

23. Custom can be abrogated in three ways : by subsequent law, by previous law, and by a contrary custom.

24. By subsequent law. We must first distinguish between general and particular customs ; between immemorial customs (existing for over a hundred years) and those within the memory of living men. Now :

(1) A subsequent general law abolishes, even without express mention, all general customs opposed to it, though they may be immemorial.

(2) Subsequent laws abolish particular customs which are not immemorial if they have the clause *nulla obstante consuetudine*, without which particular immemorial customs remain in possession.

(3) But bishops can by law abrogate any particular customs in their diocese ; but they may be called upon to show good cause.

25. By previous law. As said above, the more probable opinion is that only laws reprobating, not prohibiting, obtain against contrary customs.

26. By contrary custom. As legitimate customs have the force of law, so they can be abrogated by another custom, also lawfully prescribed, of a contrary nature.

27. It is disputed whether custom can obtain against Tridentine decrees. In spite of diverse opinions, the declaration of Pius IV. in the Bull confirming the decrees remains, viz. that the decrees of the Council shall have force against any custom whatever that may be introduced. While the Holy See appears to have adhered always to this opinion, it must be remembered that, with the consent of the supreme authority, the decrees of the Council have not been published in their entirety in every country.

28. Local usages may not always have the force of real custom ; and it depends upon the legislator to determine whether or not they have only a temporary obligation.

## DEACON

1. The Council of Trent says :

'If anyone say that in the Catholic Church there is not instituted by divine ordination a hierarchy, which consists of bishops, priests, and deacons, let him be anathema.'

Sess.  
xxiii.  
can. 6

2. The Council was opposing the innovations of the reformers, but it was not deciding the scholastic questions whether the diaconate was a sacrament. The fathers excluded purposely the term *iure divino*, substituting *divina ordinatione*: that is, what is done either immediately by God or mediately by the Church.<sup>1</sup>

3. The Council of Trent has fixed the age of twenty-three years—that is, twenty-two completed years—as the legitimate age for the ordination of a deacon ; and a dispensation as to age is to be sought from the Holy See, who within limits delegates this power to ordinary bishops.

4. The canonical powers of the deacon are :

(1) To minister at the altar.

(2) To catechise.

(3) To sing the Gospel.

(4) To preach, with leave of the *parochus*.

(5) To baptize solemnly, but only in cases of necessity.

(6) To administer the Holy Eucharist; this, also, only in necessity.

5. The office of preaching, being an act of jurisdiction, not of order, cannot be exercised without the leave of the bishop as well as that of the *parochus*.

6. In *extreme* necessity, *absente sacerdote*, the deacon can and is bound to administer Viaticum (*q.v.*). By commission and with grave necessity, *i.e.* if there be no priest who can *commode* administer, he can also give Holy Communion.

7. The solemn administration of baptism requires either commission of the bishop or the *parochus*, on account of great necessity or the utility of the Church, such as if priests be not present, if the *parochus* be seriously ill or otherwise occupied in hearing

<sup>1</sup> Attention may be called to the famous Bull of Innocent VIII. (9 April, 1489) *Exposcit tuæ devotionis* given to John de Circey, who was abbat of Citeaux from 1476 to 1501. This Bull, the authenticity of which has been often denied *a priori*, gives to the abbats of Citeaux and to four other abbats the power to ordain subdeacons and deacons. Two things are certain : (1) These abbats were not bishops. (2) This Innocentian Bull appears in the *Collection of Cistercian Privileges*, published in 1491, at Dijon, under the supervision of Abbat John de Circey himself, who testifies that the documents printed have been taken from the archives and faithfully compared with the originals.

confessions or in preaching. The more common and probable opinion is that a deacon, baptizing solemnly without commission, incurs irregularity if he act with knowledge.

Craisson,  
n. 3280

8. The First Council of Westminster decrees :

xxi. 3

Those about to be advanced 'to the diaconate (*must be examined*) in two' treatises of theology.

## DECLARATIONS OF THE ROMAN CONGREGATIONS

Benedict  
XIV.  
*Instit.*  
76, n. 8

1. The Holy See issues its decisions by means of the Congregations which treat of the causes and affairs reserved to the Pope. As they are instituted for this special purpose, the decrees they give, the interpretations they make, and the orders they pass, are given, made, and passed by the authority of the Pope, the *causa causati*. He, moreover, sometimes directly confirms their actions; for nothing of importance is done without being laid before him for final ratification.

2. The Congregations themselves declare that they act by Apostolic authority.

3. There being two kinds of Congregations, the *ordinary* and the *extraordinary*, it is only a question here whether the declarations of the ordinary Congregations such as the Congregations of the Holy Office, the Index, the Propaganda, the Council, Bishops and Regulars, Consistorial, Sacred Rites, &c., have the force of universal law. No one can deny that they have the force of particular laws for the cases to which they refer.

4. Taking that of the Congregation for interpreting the Council of Trent, we find these opinions held :

(1) The first opinion is negative, and is based on two arguments :

(a) Because this Congregation only uses such terms as *censuit*, *censemus*, not any imperative or prohibitory phrase.

(b) Because its decisions are issued for particular cases only. Hence the Pope is held to speak through the Congregation as its president, not as head and teacher of the Church. This opinion is held by Suarez, La Croix, Sanchez, &c.

(2) The second opinion is affirmative as far as concerns decrees duly authentic, *i.e.* sealed and signed by the prefect and secretary of the Congregation ; for such cases come under the law *Qui facit per alium est perinde ac si faciat per seipsum*. Moreover, these, being declarations, do not need the promulgation required for new laws. This opinion is held by Fagnanus, Reiffenstuel, Luca, and Barbosa.

(3) The third opinion distinguishes the various declarations, viz. :

(a) Those that are *extensivæ*, i.e. stretching the words beyond their ordinary meaning and accordingly granting or forbidding something. The decisions forming as it were new laws do not have that force unless they are issued *ex speciali mandato Papæ*, and are duly promulgated. They are not retroactive in effect.

(b) Those that are *comprehensivæ*, i.e. keeping within the ordinary meaning of the words only explain but do not add to the law. These decrees have the force of universal laws, and are retroactive in effect. This opinion is held by Schmalzgrueber.

5. What is said of the universal application of the declarations S.C.C. applies to the decrees, and the application of all the other Congregations.

6. Lombardi makes the distinction between decisions judicial and extrajudicial ; and holds :

(1) In the first instance that *per se* the decisions are only of particular application ; though, if many like sentences are issued, they may form a general law, as a custom can be deduced therefrom.

(2) In the second case, also *per se*, the application is of particular importance, though many like sentences will produce a custom.

(3) If the decisions have a general import, then they certainly constitute a general law, for the Pope either makes them his own directly, by publishing them in his name, or he approves of them, and orders their promulgation. I. p. 250

7. While it can be held in theory that the decisions have no universal effect in practice, these declarations cannot be set at naught, for they are made by the authority of the Holy See.

8. As regards the obligation of obedience in the particular cases, there can be no question whatever as to binding power of authentic decrees. Thus a decree of S.C.R., duly signed by the prefect and by the secretary of the Sacred Congregation and bearing the official seal, has Apostolic authority in the particular case for which it was issued. It also forms a presumption in favour of applying the principles therein contained to similar cases. The same applies to all the other Congregations. Thus the S.C.R., 23 May, 1846, declared that although the matter had not been referred to the Pope, its replies and decrees have the same authority as if they emanated immediately from the Pope. This declaration was duly confirmed by Pius IX.

9. The execution of the decrees of the Roman Congregations is

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committed to the ordinary who receives the rescript containing the decisions.

### DECREE

1. The word 'decree' has various meanings :

(1) It is a generic term for any legislative act of the Pontiff, especially for those in the form of a bull (*q.v.*), a breve (*q.v.*), or a *Motu proprio* (*q.v.*).

(2) It is used for the decisions of the Roman Congregations.

(3) It is also employed as the designation of the disciplinary enactments of councils, synods, &c.

(4) It is used for the clauses of a bull or other document by which the Pope orders something.

(5) It is also used for different collections of canons.

### DECRETAL LETTERS

1. Decretal letters are apostolic constitutions issued in reply to questions and consultations, and defining some point of law.

2. The term is also used loosely for any kind of apostolic letter.

3. Decretals form one of the sources of common law ; but the application has to be determined by a close attention to the circumstances under which they were issued, *i.e.* whether the reply be general or particular.

### DECRETUM GRATIANI

*See* GRATIANA

### DEFENDANT

1. The defendant or *reus* is one who is charged with anything before a judge. The charge may be either criminal or civil.

2. The defendant has a right to know the accusation made against him and the names of the witnesses, so that he can defend himself. The only exception as to the latter is in the case of heresy.

3. Any person can defend himself in court except the following :

(1) Infants under puberty, and those of unsound mind, &c.

These appear through guardians appointed either by the judge or by themselves.

(2) Women, with certain distinctions. Thus :

(a) Religious women, even if not enclosed, cannot appear *personally* in any ecclesiastical court as defendants.

(b) No woman can be compelled to plead in person except she be accused of an atrocious crime.

(3) Those under excommunication when they appear voluntarily and for their own benefit. But they may be compelled.

(4) Regulars individually require the leave of their superior ; but collectively they can only appear through the persons whom the canon law allows to act as defendants in the name of the monastery, *i.e.* prelates.

4. In cases of the rights or property of a parish, the parish priest is the defendant, because by the common law he is vested with the administration of the rights or property of his parish. But he cannot act to the exclusion of the bishop, who with him has cumulative rights of administration.

5. A defendant, even if unwilling, can be compelled to appear either personally or by procurator.

(1) He can be compelled by papal authority to appear in person. But, as a rule, the superior ecclesiastical judge cannot compel the defendant to appear in person except in cases of grave criminal charges or where the ends of justice require his personal attendance. If the defendant be cited to appear in person the cause must be stated in the citation, otherwise it is of no avail.

(2) He can appear in all other cases by a procurator (*q.v.*) or advocate (*q.v.*) ; and even in cases where he has to appear in person he can charge an advocate with the conduct of his defence.

## DEFENDER OF MATRIMONY

1. A defender of matrimony should be appointed in each diocese by the ordinary, if possible, from among the clergy ; but a layman can fulfil the office.

Benedict  
XIV.  
Constit  
*Dei misericordie*,  
1711

2. He must have a real knowledge of the law, and be known for an upright spirit.

3. He must take an oath on the Gospels at appointment faithfully to do his office, and he must repeat this oath in each case.

4. His work should be done *gratis* ; but if he refuse to work without salary or reward, the judge can make the party who



asserts the validity of the marriage in question pay what is necessary. If, however, the party cannot do so, the necessary salary must be paid either out of the fines imposed by the Court; or if there be not enough the bishop has to pay.

5. In any case that comes before him, he has, by word and writing, to set forth in their best light all the arguments that tell for the validity of the marriage.

Craisson,  
IV. 6091

6. In all cases affecting the validity or the nullity of a marriage, he must be cited on every occasion under pain of the nullity of all the proceedings; and all the *acta* are to be communicated to him. He must also intervene even in those causes in which it is evident that the marriage was null.

Instruc-  
tion  
S.C.P.F.  
20 June,  
1883;  
*Collec-  
tanea*,  
nn. 1572-3

7. If, on account of particular circumstances, he be unable to be present at every sitting, he must receive the notes of the same; and other sittings are to be held if he suggest it, and any witness that he considers to be necessary has to be summoned.

8. It is his office to make the appeal, if necessary, from the court of first instance.

9. The bishop can, if there be a just cause, suspend or remove him from his office and substitute another.

10. The bishop can also appoint a substitute if the official defensor be prevented from doing his office in any particular case.

xv. 3

11. The Fourth Westminster Council decreed:

‘Whenever in a matrimonial cause a juridical process is to be instituted concerning the validity or the nullity of a marriage, let it be instituted *ad normam iuris*, with the assistance of the Defender of Matrimony: so that this may be done, the Defender of Matrimony shall be nominated in each diocesan synod, the bishop’s right of changing him being preserved.’

## DEFENDER OF VOWS

1. In every diocese a cleric, secular or regular, should be appointed by the bishop as the official defender of vows in case of any religious appealing against the validity of profession.

2. His salary should be paid from the goods which the appellant brought into the order; or, if there were none, by the order itself if it have any means. Failing this, his salary must be made up from the fines of the episcopal court.

3. Benedict XIV., Constit. *Si datam*, 1747, gives the rules to be followed in a process for establishing the nullity of vows. Amongst them are the following:

(1) Reclamation against vows made by force or fear must be entered within five years of the profession.

(2) It must be made before the superior of the order and the ordinary of the diocese.

(3) Either side can institute the reclamation.

(4) In the case of nuns, the confessor cannot be one of those before whom the reclamation is made, but he can delegate to another the right to be assessor to the ordinary.

(5) The presence of the defender of vows at every formal step in the proceedings is necessary for the validity.

4. In case of a sentence adverse to the reasonable opinion of the defender of vows, he can, if necessary, carry the matter to a higher tribunal.

5. It will be noted that the defender of vows only intervenes in cases of alleged nullity, not in cases of dispensation.

### DEFINITIVE SENTENCE

1. A definitive sentence is one by which the judge finally pronounces on the principal cause that is brought into judgment.

2. It is :

(1) Absolutory, *i.e.* absolving the accused from the crime charged against him.

(2) Condemnatory, *i.e.* pronouncing his guilt and fixing the punishment.

(3) Declaratory, *i.e.* pronouncing his guilt, and that he has incurred the punishment fixed already by law. This sentence takes effect from the moment the crime was committed, not from the date of the sentence.

3. For a definitive sentence there is required on the part of the judge that :

(1) He must be competent.

(2) Not excommunicated publicly.

(3) Prudent and learned in the law.

(4) Free from all partiality.

(5) Give a fair trial and attention to the evidence.

4. There is also required on the part of the sentence that :

(1) It must be absolute.

(2) Clear and determinate.

(3) As a rule, conformable to the law.

(4) Conformable to the law.

(5) Pronounced after citation (*q.v.*) and in the presence of the parties or representatives unless their absence be contumacious.

(6) After due trial conducted with the necessary formalities.

(7) It should be in writing and read by a competent person in a public place.

(8) It should be pronounced on the day and at the time mentioned in the citation, but

(9) Not on Sundays or holydays of obligation.

(10) In criminal cases, and where censure is inflicted, the cause moving the judge must be expressed in clear terms.

5. The effects in particular are :

(1) As regards the judge. He cannot revoke or alter his sentence except where it is *ipso iure* null and void. He is, as regards the case, *functus officio*.

(2) As regards the parties :

(a) If no appeal be interposed within ten days the judgment must be obeyed.

(b) The defendant if absolved can plead the sentence as a bar to any future action in the same matter.

(3) As regards the case, it is closed, and after ten days the matter becomes a *res iudicata*, and demands execution unless an appeal be entered in due form.

## DELATION

1. Delation is a secret denunciation or declaration of a crime for the purpose of charity.

2. Delation, according to divine and natural law, can only take place after two charitable but useless monitions, one being in secret and the other before two or three witnesses.

3. Delation, therefore, differs essentially from accusation (*q.v.*).

4. A delator who cannot prove his charge is ordinarily suspended from his office and benefice until he prove that he was not moved by malice.

## DELEGATION

1. Delegation is the act by which a superior commands and commits a cause belonging to his tribunal to the charge of a lower judge whom he empowers to act or exercise jurisdiction in his stead. The jurisdiction, then, which the lower judge exercises in such

a case, is not his ordinary jurisdiction ; and he does not hear and judge the cause in his own right but in the right of his superior.

2. Delegation is of various kinds :

(1) *A iure* ; and is sometimes not by reason of an office, but by commission.

(2) *Ab homine*. In this case the delegation, in all causes that concern validity, must be positive or at least have presumptive signs indicating actual consent ; in those cases which concern only the lawfulness of the act a reasonable presumption is enough.

3. Delegation also is :

(1) Concerning all causes, or at least all of one kind, *e.g.* matrimony ; and it may be for a limited period or place or quantity.

(2) Concerning a particular cause to be judged here and now.

4. Delegation is given :

(1) By reason of dignity.

(2) By reason of person.

5. The power of delegation belongs not only to him who has supreme jurisdiction, but to all judges who have ordinary jurisdiction. For what a person can do of his own right that he can do through another.

6. But neither a judge in ordinary nor those delegated for all causes can delegate all his jurisdiction to another without the consent of the Pope ; for this is not so much to delegate as to abdicate. Moreover, it is also to appoint another ordinary judge ; a matter which is in the power of the Holy See alone.

7. Those who receive delegation from any other than the supreme source cannot subdelegate their powers. But those who are delegated by the Holy See can subdelegate others unless they be appointed to deal with the matters personally or the delegation be purely ministerial, *e.g.* to execute a dispensation of matrimony.

8. Delegation for all causes allows of subdelegation ; for the person so delegated is a quasi-ordinary, and can therefore subdelegate.

9. Delegation coming from the supreme authority also admits of subdelegation in cases that are not so grave as to require the presence of the delegate, unless the parties concerned otherwise agree.

10. Only those free from the defects that bar the reception of jurisdiction can, generally speaking, be delegated. These defects arise :

(1) From nature, *e.g.* deafness, dumbness, insanity, age, &c.

(2) From law, *e.g.* excommunication *non tolerata*, infamy.

(3) From custom, *e.g.* slaves, women, and dependents.

11. There are certain qualifications required in every delegation. Thus :

(1) As a rule only clerics can be delegated.

(2) Only one constituted in a dignity is, as a rule, delegated by the Pope except in the cases of executing dispensations or faculties granted by the Apostolic See.

Craissou,  
n. 316

12. Lay people cannot be delegated for the spiritual or criminal causes of clerics, and according to the more probable opinion not even for their civil cause. But the Pope can commit certain cases to laics, but not all cases ; for he cannot do away entirely with the privilege of the *forum*, which is inherent in the constitution of the Church.

13. Delegation must be made known to the delegated person and be accepted, either expressly or implicitly. It must be free on the part of the superior. It must be expressed in writing in the cases provided for in law.

14. For the exercise of his delegated jurisdiction the judge must, for the lawfulness of the act, state that he acts by delegated authority. This is especially necessary in cases where scandal may arise from a bishop doing what is known to be beyond his ordinary power.

15. It is important to know in what cases a bishop acts as ordinary or as delegate of the Holy See, for, besides the possible scandal mentioned above, the direction of appeal is different. If he act by ordinary jurisdiction, the appeal is to the metropolitan ; if by delegated jurisdiction, the appeal lies only to the Pope. Moreover, regularly speaking the chapter *sede vacante* does not succeed to the delegated jurisdiction.

16. The following rules are useful in deciding when the bishop's jurisdiction is ordinary and when it is delegated :

(1) In an action which does not fall under the ordinary jurisdiction it does not necessarily follow that the bishop is acting as apostolic delegate. It is necessary to see whether the words *auctoritate apostolica* be found with such a term as *Concedimus*, or with such a term as *Facias*. If with the former, the bishop's jurisdiction extends to the case in point ; if with the latter, it is held to be delegated.

(2) If the matter be one of those which fall under ordinary jurisdiction, it is held to be such notwithstanding words which may imply delegation. In such a phrase as *auctoritate etiam apostolica* the *etiam* implies ordinary jurisdiction.

(3) If the matter were formerly under ordinary jurisdiction but is now, by privilege, exempt, the bishop is regularly to be considered as acting with delegated jurisdiction.

17. The limits of the delegation are to be defined by the letters of appointment, and these must be carefully observed except in the cases allowed by law.

18. Delegation expires in several ways :

- (1) By the death of the delegate, if the delegation were personal.
- (2) By the death of the delegator, when the business is still whole and the judge has not begun to exercise his jurisdiction. But once the case has begun, even by citation (*q.v.*) it is no longer whole and therefore the delegation continues.
- (3) By the cession of the delegate's office, *i.e.* if it be given up *re adhuc integra*.
- (4) By the deposition, renunciation, or translation to another dignity of the delegate, subdelegation *re adhuc integra* expires.
- (5) By the revocation of the delegation by the superior.
- (6) By lapse of a fixed period.
- (7) By the completion of the business.
- (8) By a lawfully made and pronounced opinion that the delegated judge is suspect.

## DENUNCIATION

1. Certain persons must be denounced to the Holy Office of the Universal and Supreme Inquisition.

(1) Heretics and those suspected of heresy. This applies, of course, only to formal heretics.

(2) Schismatics and their favourers and receivers.

(3) Those who practise superstitions with express or implicit invocation of the devil.

(4) Those who teach, defend, support, or preach condemned propositions.

(5) Confessors soliciting *ad turpia* in confession, or on occasion or pretext of confession, whether in the confessional or in any place used for hearing sacramental confession.

2. Denunciations must be in writing, with the full name of the denouncer.

3. Catholics living in places mixed with heretics are not bound to denounce them.

### DEVOLUTION

1. Devolution is the transference to immediate superiors of the right of conferring benefices when the ordinary collator neglects to confer them within the term of six months.

2. The Fourth Council of Lateran, 1215, orders that if those charged with elections for cathedral churches do not proceed within three months the power to elect passes on to the immediate superior.

### DIMISSIONALS

1. Dimissionals are letters given by a bishop to his subjects in order that they may be ordained by another bishop.

2. Religious superiors also issue these letters to the bishop of the diocese in which the ordinand lives. In the case of religious at a *studium generale*, or university, the letters must be directed to the bishop in whose diocese the *studium* is, provided that the ordinand has lived for a complete year within the limits of that diocese.

S.C.C.  
7 June,  
1899

### DIOCESAN CONSULTORS

1. Diocesan consultors are the legally constituted and official advisers of the bishops in the United States, in some parts of Scotland and in Australia. They are a temporary expedient until cathedral chapters can be erected. Hence, while the body of diocesan consultors holds a place analogous to that held by a chapter, it is not the same body and has not the same rights: *e.g.* the *consent* of the diocesan consultors is never required for the validity of an act.

2. The Third Plenary Council of Baltimore, finding that the recommendation of the Second Plenary Council had not been followed as fully as might have been, ordered that in every diocese a certain number of worthy and learned priests should be appointed diocesan consultors whose advice the bishop should be bound to take in certain cases expressly enumerated.

17-20

3. Diocesan consultors have no corporate existence and have no presiding officers of their own. The bishop is their sole head.

4. In each diocese six or four, or where even that number can in no wise be had, two consultors must be appointed. One half

of the number are at the sole appointment of the bishop, the other half are nominated by the entire clergy and appointed by the bishop.

5. The appointment is for three years, and may be repeated. If the term expire *sede vacante* the consultors remain in office until the accession of the new bishop, who is bound, within six months from his accession, to proceed to appoint his consultors. In the event of the death, or resignation, or removal of a consultor, the bishop, after hearing the advice of the remainder, fills the vacancy at will.

6. During the time of office, diocesan consultors cannot be removed against their will except for lawful and just causes and with the advice of the other consultors. They can be removed for other causes than crimes, and without a formal trial though a previous investigation is necessary.

7. The bishop must call them together four times in the year, or, where this is impossible, twice a year at least. He presides over the meetings. Extraordinary meetings may be held as often as they are necessary.

8. The advice of the diocesan consultors must be asked for in the following cases :

(1) In convoking and promulgating the diocesan synod. The bishop is bound, before he holds his synod, to lay before his consultors all the decrees he intends to make in the synod and to receive their advice thereon.

(2) In dividing missions or parishes ; for this is a species of alienation (*q.v.*).

(3) In giving a mission or parish over to a religious community ; for this, also, is a species of alienation, as secular parishes are secular benefices.

(4) In appointing the commission for the seminary.

(5) In appointing a new diocesan consultor, and also in appointing synodal or pro-synodal examiners.

(6) In alienation (*q.v.*) of ecclesiastical property.

(7) In imposing new taxes.

(8) In determining what missions shall have irremovable rectors.

• (9) In appointing the first irremovable rector to a mission.

(10) In fixing the amount of pension, if any, that is to be paid to an irremovable rector.

(11) In determining, out of synod, what is to be the salary of rectors.



(12) In making laws, out of synod, concerning stole dues &c.

9. The consultors must give their advice as a body, not individually; hence the collective mind of the consultors can only be made up after due consideration. They may vote by secret ballot whenever they wish.

10. *Sede vacante*, the administration of the diocese does not belong to the diocesan consultors, but to the administrator whose appointment comes from the deceased bishop or from the metropolitan or the senior suffragan.

11. The consultors hold the same relation to the administrator as to the bishop.

12. The consultors share with the irremovable rectors in the privilege of recommending candidates to the Holy See for the vacant diocese.

13. In Scotland four consultors are appointed, two by the bishop and two proposed by the clergy. They have no right to make recommendation for the episcopate.

### DIOCESAN OFFICIALS

The First Westminster Provincial Council decrees :

1. 'It is fitting that in every diocese a vicar general should be appointed, and that such faculties as the bishop thinks proper shall be given to him in writing, so that when the bishop be absent or hindered the *vicar general* may be able to attend to the ecclesiastical business of the diocese and assist the bishop in the government of the Church.

2. 'In addition to the vicar general, the bishop may also appoint vicars foran, or, as they used to be called in England and now are commonly called, rural deans, giving them certain faculties in writing for their use in a specified district. It will be the duty of the rural dean :

(1) 'To take the chair at the meetings or conferences upon cases of conscience or liturgy throughout the district assigned to them.

(2) 'To attend to priests who are sick.

(3) 'To look after the administration of Church property.

(4) 'To see that the sacred edifices are kept in repair.

(5) 'To lay before the bishop or vicar general such matters as need attention.

3. 'It is also fitting that the bishop should select from his chapter or from the body of his clergy a few men of judgment to help him in the administration of the temporalities of the diocese.

He should often advise with them to the end that pious foundations may be managed in the best way possible and maintained in safety, and that the collections made amongst the faithful may be distributed with wisdom and advantage and without any party spirit.

4. 'Every bishop must appoint synodal examiners for his diocese, and that at his next diocesan synod.

5. 'At this also he should select five of his most suitable priests to form a Commission of Inquiry. And it seems proper that two of these should be members of the chapter and the other three taken from the body of the clergy. [And one of these should be made by the bishop president of the Commission.]

6. 'Every bishop should have a keeper of the archives. And his duty will be to take charge of all papers and documents that have reference to the diocese, and he should take copies of them in case the originals should fall into other hands. Moreover he should have a complete list of them all.

7. 'A defender of marriages shall be named at each of the diocesan synods, saving the bishop's right, however, of changing him.' I. West.  
xiv. 1-7

8. Besides these officials there are usually required a judge for the ecclesiastical court if the vicar general do not sit, a procurator fiscal to represent the diocese before the same court, a chancellor for expediting dispensations and faculties, a notary, a master of ceremonies, and, perhaps, now, a master of sacred music.

## DIOCESE

1. A diocese is a part of the universal Church marked off by the Supreme Pastor and confided to a bishop with ordinary jurisdiction in spirituals and temporals.

2. Hence only the Pope can make a diocese, and only he can divide or join territory for ecclesiastical purposes.

3. A group of neighbouring dioceses are usually gathered together into a province under an archbishop or metropolitan.

4. The diocese is an ecclesiastical unit, and should be complete in itself. It enters into relations with the other dioceses at the provincial synod, where it is represented and has a voice in making new decrees.

5. The clergy of the diocese are either native or affiliated by letters of incardination or, formerly, by presumption which was capable of proof.

6. The diocese is ruled by the bishop with the help of his chapter,

and, *sede vacante*, the chapter, as a body, and then the vicar capitular alone, in their name, rule and administer it.

7. No priest is allowed to be absent from his diocese without the leave of his bishop.

8. No priest can leave his diocese permanently without letters of excommunication, which are invalid if issued before he has obtained letters of incardination from another bishop, or unless he go into religion.

9. No priest can be obliged to leave his diocese, *i.e.* to accept his *exeat*.

10. In the division of a diocese the clergy who are already in the part that is cut off remain in the new diocese.

### DIRIMENT IMPEDIMENT

1. A diriment impediment is an obstacle to matrimony which affects the validity of the contract.

2. Impediments of this kind come from the natural law, the divine law, and the ecclesiastical law.

3. Impediments diriment of the law of nature or the law of God bind all, whether baptized or not. The impediments of ecclesiastical origin only affect the baptized.

4. Heretics are bound also by the diriment impediments of the Church. The impediment of clandestinity is not excepted, though by special legislation, *e.g.* in Malta, they are dispensed in certain circumstances.

5. The Church has *de iure proprio* the power to make diriment impediments, and the Council of Trent pronounces anathema against those that say that she could not do so or that she erred in making them.

6. The impediments come from six causes :

- (1) Defect of consent.
- (2) Defect of nature.
- (3) Defect of liberty.
- (4) Defect of manner in which the contract is made.
- (5) Defect of reverence due to relations.
- (6) Defect of holiness.

7. Concerning the defect of consent, the diriment impediments are these :

(1) The impediment of error. Error may be *quoad substantiam*, *i.e.* as to the person ; or *quoad qualitates*. Both of these may be either antecedent or the cause of the contract, or concomitant, which does not effect the contract directly. Now an error *quoad*

Benedict  
XIV.  
Constit.  
*Magnae  
Nobis*,  
29 June,  
1748 ;  
Constit.  
*Ad tuas  
manus*,  
8 August,  
1748 &c.  
*Cf.* Sess.  
xxiv.  
can. 4

*substantiam*, either antecedent or concomitant, is a diriment impediment. Error *quoad qualitates* regularly and *per se* does not induce the impediment unless it be such as is held to affect the substance itself.

(2) The impediment of condition. This consists in the state of slavery properly so called and unknown to either or both of the parties. It is of ecclesiastical origin, and extends even to temporary slavery. If the state of bondage be known to the parties, it is no diriment impediment; moreover, it may be made valid, without dispensation, by consent either expressed or tacit.

(3) The impediment of force and fear. Fear is of various kinds. Grave, light, justly incurred, unjustly incurred, which last may be either for the end of extorting matrimony or for some other end. Then, again, fear comes from an extrinsic cause and free; or from an intrinsic cause and not free. Hence that fear and force should become a diriment impediment four things are necessary:

- (a) It must come from a free cause.
- (b) It must be grave.
- (c) Unjustly inspired.
- (d) For the purpose of extorting marriage.

The gravity has to be considered by the judge according to the circumstances and qualities of the person, the nature of the evil and the person inspiring the fear. The unjust inspiration is determined by two considerations:

(a) Whether the person so inspiring, be he a public or private person, has a right to demand that marriage.

(b) Whether he have a right to threaten and carry out what is threatened. If either of these be absent, the fear is held to be unjustly inspired. The Council of Trent requires, if the impediment be public, that the revalidation should take place before the parish priest and two witnesses; but if it be occult a secret renewal is sufficient. Benedict XIV. declared that a marriage celebrated according to the Council of Trent, although invalid by lack of consent, can be made valid by subsequent free connection without the necessity of appearing before the parish priest. But where the Tridentine formula was not observed in the first instance it must be fulfilled.

*Instructio*, 86

(4) The impediment of liberty or rape. This consists in the violent abduction of any woman for the sake of contracting marriage. For a rape three things are necessary:

(a) The abduction must be from place to place or from house to house.

(b) It should be against her will.

(c) It should be done for the sake of forcing her to a marriage.

Wanting these, the S.C.C. 23 January, 1586, declared that there would be no diriment impediment. According to the Council of Trent the impediment exists as long as the woman remains in the power of her abductors. It is generally denied that rape as an impediment exists in the case where a woman abducts a man.

N.B.—As concerns mad people who have no use of reason, these by the law of nature are inhable for contracting marriage, as they are wanting in liberty. If they have lucid intervals, they can contract validly ; so also can the weak in intellect.

(5) The impediment of age. For males the age of fourteen years completed is required for a valid marriage ; for females twelve years completed. Unless malice supplies for age, the want of the legitimate age makes the contract null and void. This impediment is of ecclesiastical origin.

(6) The impediment of impotency. The *potentia ad copulam perfectam ex sese ad generationem prolis aptam* is necessary for the contract. Impotency is absolute *respectu omnium* or relative *respectu alicuius tantum*. It is also perpetual or temporary. It is also antecedent or consequent upon the marriage. Hence impotency, if relative, and also perpetual and antecedent, vitiates a particular marriage both by canon and by natural law ; if absolute, it impedes all marriage. In judging this impediment the Constit. *Dei miseratione* of Benedict XIV., 1741, must be exactly observed, and the fact of impotency be proved. If there be doubt, the experiment of three years is to be made according to the older discipline. But this seems no longer to be in use. The S.C.C. has not ordered it since 1817, and the instructions of the Sacred Congregations of 1840 and 1884 are silent on the subject. Hence if the parties are in good faith they are to be left alone.

(7) The impediment of bond consists in a previous marriage still existing.

(8) The impediment of crime arising from—

(a) Perfected adultery wilfully committed with a serious, manifest, and accepted promise of subsequent marriage.

(b) The mutual murder of a spouse for the purpose of a subsequent mutual marriage.

This impediment is of ecclesiastical origin.

(9) The impediment of clandestinity. See under CLANDESTINITY.

(10) The impediment of relationship, which is either natural or spiritual.

(11) The impediment of affinity. *See under AFFINITY.*

(12) The impediment of public honesty. This comes from valid *sponsalia* (q.v.) or from *matrimonium ratum*. That *sponsalia* should induce this impediment certain conditions must be fulfilled :

(a) The *sponsalia* must be valid.

(b) They must be contracted with one person.

(c) They must be absolute, not conditional.

Trid.  
Sess.  
xxiv.  
c. 3

This impediment is perpetual ; hence if the *sponsa* dies or enters religion, the *sponsus* cannot contract with her relatives to the first grade of the right or of the collateral line without dispensation. Also if the *sponsalia* be broken by mutual consent. It also arises from *matrimonium ratum* by the argument *a minori ad maius*, and it extends to the fourth degree.

(13) The impediment of Sacred Order. *See CELIBACY.*

(14) The impediment of vow. The solemn vow of chastity made in religious profession is a diriment impediment, and dissolves a marriage *ratum et non consummatum*. By a particular privilege in the Society of Jesus, the simple vow of chastity made after the two years' novitiate has the same force of a diriment impediment as the solemn vow in other religious societies ; but it does not dissolve *matrimonium ratum*.

Trent,  
Sess.  
xxiv.  
c. 9

(15) The impediment of disparity of worship. This comes from the sanctity due to the sacrament of marriage. It consists of the union between a baptized and a non-baptized person. In the indult given by the Holy See for dispensing with this impediment the conditions upon which it can be used are as follows :

(a) A grave cause in each individual case.

(b) It is to be used in localities where there are more non-Christians than Christians.

(c) And only if there be no contumely of the Creator. That is, there must be no fear of the perversion of the Christian party. All children must be brought up in the true religion, and there should be some hope of the ultimate conversion of the unbeliever.

8. Those impediments which are of ecclesiastical origin can be dispensed by the law-maker. *See DISPENSATION.*

## DISMISSAL

1. Dismissal or absolute removal is a canonical punishment whereby a cleric is deprived of his ecclesiastical office or position. It is a most severe punishment inflicting both disgrace and pecuniary

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loss, and is, in fact, as canonists say, a sentence of social or civil death.

2. There are three kinds of dismissal :

(1) Privation, which removes from office or parish, but does not disqualify from holding office in the future.

(2) Deposition, which not only removes from office or function, but also perpetually disqualifies from holding offices.

(3) Degradation adds to the above the loss of all ecclesiastical privileges and reduces the cleric to the lay state, saving of course the character of order.

3. Practically, there is not much difference between privation and deposition ; for morally the former produces the same effect as the latter, since dismissal casts such a slur upon a cleric that it is well nigh impossible for him to hope for employment again from any bishop.

4. It must be carefully borne in mind that dismissal is not suspension, and it cannot be inflicted *ex informata conscientia*.

5. For a legal dismissal there must be :

(1) A crime.

(2) Expressed by law.

(3) And duly proved.

6. There are several classes of persons liable to dismissal, and they may be grouped conveniently under four heads :

(1) Bishops.

(2) Beneficed and irremoveable rectors.

(3) Removeable rectors.

(4) Assistants.

### § 1. *Bishops*

7. The criminal, civil, and disciplinary cases of bishops are among the greater causes reserved to the Holy See.

8. The Pope alone, as the *iudex ordinarius* of bishops, can pronounce sentence of dismissal.

9. Charges against bishops are considered at Rome either by the S.C.E.R. or by the Holy Office. In countries under the S.C.P.F. the cognisance of such cases falls first to that Congregation. In all cases the findings of the Congregation concerned are submitted to the Pope.

10. If the investigation at Rome be incomplete, the case may be returned to some local authority delegated to inquire into the case and to report the finding to the Holy See.

§ 2. *Beneficed and irremovable Rectors*

11. Under this head come all who have fixity of tenure.

12. Such can only be dismissed :

(1) For a very grave and atrocious crime :

(2) Which must be clearly stated in the canon law.

(3) And after a trial with a sentence either declaratory or condemnatory.

13. The dismissal can only be inflicted for a crime. For dismissal being a most severe punishment, and punishment only following on offence, the crime must be very grave and atrocious to be proportioned to the punishment.

14. It must be clearly stated in law. The bishop cannot inflict dismissal for any crime at his will, but only for such crimes as, by the canon law, are punishable with dismissal.

15. It must be fully proved by a canonical trial. For it is a maxim of canon law that no regular or ordinary punishment whatever can be inflicted except on one who is lawfully convicted or has confessed. This trial is necessary when the dismissal is imposed *de iure*, for the fact of the crime must be established before even a sentence declaratory be passed. It is also necessary, of course, before dismissal can be imposed *per sententiam condemnatoriam*. The trial must be canonical, but it may be either formal or summary. In every case, whether the trial be formal or summary, the proofs of the guilt must be full and conclusive, for conviction can never follow half-proof.

16. The Westminster Councils have prescribed the procedure to be observed before a missionary rector be definitely dismissed. See COMMISSION OF INVESTIGATION.

17. In the United States the Instructions of the S.C.P.F. of 1878 and 1886 prescribe the procedure ; the latter also now obtains in the larger dioceses of England and in Scotland.

18. In Ireland the Council of Maynooth, 1875, leaves the particular mode of trial to be decided in the provincial synod ; but by adding the Westminster method of procedure seems to recommend it as the norm to be followed.

19. The crimes which *de iure* are punishable with dismissal are as follows :

(1) Heresy.

(2) Not receiving the priesthood within a year of appointment as parish priest.

(3) Falsification of apostolic letters.



(4) Assassination. This includes not only the doers but those who hire them.

(5) Killing or striking a cardinal or bishop.

(6) Simony (*q.v.*), whether real, confidential, or mixed.

(7) Procuring abortion.

(8) Sodomy.

(9) Duel, even if death do not follow.

(10) Alienation of Church property without due leave.

(11) Usurpation of Church property.

(12) Illegal promotion to orders.

20. The crimes for which dismissal *per sententiam* can be imposed are :

(1) Neglect to wear a becoming clerical dress.

(2) Non-residence.

(3) Drunkenness, gambling, usury, murder, theft, perjury, &c.

(4) Contumacy under censure, *i.e.* remaining under censure for a year.

(5) Irregularity on account of some offence punishable with dismissal.

(6) Concubinage and simple fornication.

In this last case it is disputed whether a bishop *de iure communi* can proceed immediately to the dismissal of a priest guilty of repeated acts or of only one act of fornication, without previous monition or suspension. But where the custom sanctions it there is no doubt but that he may do so.

Bouix, *Dr. Parocho*, pp. 375, 386, 396

21. To these six crimes the Third Plenary Council of Baltimore and that of Scotland have added seven more causes for dismissal, to wit :

(1) Pertinacious disobedience in a matter of grave moment concerning diocesan rules of administration.

(2) Open detraction, after frequent monitions, of the bishop's mandate to support or build Catholic schools.

(3) Rash and repeated incurring of debts, after monition, either official or personal, or for manifest disobedience in paying debts.

(4) Collusion in certain pecuniary transactions.

(5) Fraudulent falsification, in grave matters and with intent to deceive the bishop in the annual report of the mission.

(6) Public and lasting infamy as regards morals.

(7) Refusal of a blameless yet incapable rector to resign for a most grave cause legitimately proved. In this case, if the bishop cannot appoint a vicar with a suitable stipend, he can remove the rector, supplying him with a pension and the title of *rector emeritus*.

*Cf. Trent*, Sess. xxi. c. 6

### § 3. *Removeable Rectors*

22. The case of the dismissal of removeable rectors is to be determined by the same principles that rule the cases of irremoveable rectors, for both are based on the eternal laws of justice.

23. A removeable rector can only be dismissed for a crime or other grave reason.

24. Though such a rector is removeable *ad nutum* this does not at all mean that he can be dismissed at the arbitrary or unrestricted will of the bishop. The *nutus* must be reasonable and the cause thereof may have to be proved. The bishop's power in this is essentially a limited one. But in such a case he has a great deal of discretionary power, and is not tied down to the causes or crimes which rule the case of irremoveable rectors.

25. There are other faults which, in the estimation of good men, are sufficiently grave to make the rector unworthy of his position; and there are also grave reasons of public utility which may demand such a dismissal. *Sine culpa, nisi subsit causa, non est aliquis puniendus*. In this latter case no trial is required; but there must be put on record a very careful and accurate investigation into the causes.

26. The Fourth Westminster Council decrees that the same xii. 8 method of procedure as decreed for the cases of missionary rectors must be extended to 'priests to whom the exercise of their ministry has been forbidden by the sentence of the ordinary.'

### § 4. *Assistant Priests*

27. The same principles of justice applies to all priests, whether rectors or assistants. No one can be punished without a proven crime.

28. It must be noted that canonists hold that the withdrawing of faculties from a priest ordained on the title of the mission is equivalent to privation from a benefice; and it should therefore be only inflicted in the same manner.

29. Any priest who is aggrieved in the matter of dismissal has the right to appeal.

30. 'As we have seen, dismissal from office being a privation of what is dearest to man, namely, of his position, standing, and of the honour and emoluments connected with it, is one of the severest punishments of the Church. Now it is a principle of

Smith,  
iii. p. 88

canon law and also of natural justice that, as a rule, the heavier punishments should not be inflicted until the more moderate ones have been applied in vain. Therefore canonists all agree that dismissal should be made use of only as a last resort, and consequently only when all the milder remedies have been tried and produced no effect.'

## DISPENSATION

1. Dispensation is a relaxation of the common law made with due knowledge of the cause by him who has the right of dispensing.

2. Dispensations, considered as to the mode in which they are granted, are :

(1) Due, when they are based on the utility or necessity of the Church or on the prerogative of merit.

(2) Permissive, also called voluntary, when the modifications of the law are left to the will of the superior, or when something is allowed to present worse actions.

(3) Prohibited, when dispensations cannot be granted without manifest dissipation of the law, or when there is no just cause of dispensing.

3. Regarding the granter there are various kinds of dispensation :

(1) Of the law : that is, recognised and provided for in the law.

(2) Of man : that is, granted by superiors.

(3) Mixed : that is, provided by the law at the will of the superior

4. Regarding the subject-matter another division of dispensations is :

(1) Of justice, concerning matters that are due.

(2) Of grace, concerning matters that are favours.

(3) Mixed, which also include tolerance.

5. Regarding the mode another division is into :

(1) Tacit, *e.g.* when a superior knowingly grants an office to one who is under a disability, because a superior is never thought to remit an unknown defect.

(2) Expressed, *e.g.* when the matter dispensed and the fact of dispensation are stated in clear terms.

6. The last division is into :

(1) Excusable, when granted under necessity.

(2) Laudable, when given for the common good.

(3) Condemnable, when granted without any cause.

7. Dispensation without a just cause from the law of a superior is not only unjust but it is also invalid.

8. To dispense without just cause from one's own laws is, indeed, unjust, but is nevertheless valid, because then the legislator himself dispenses willingly in matters which depend on his will for their force.

9. Hence the Pope can dispense in positive law; and in the supreme authority the will alone is taken as a just cause of action.

10. Regularly speaking, the Pope cannot dispense in divine laws, because as regards this he stands in the position of an inferior towards the law of his superior; nay, there is less proportion between the Pope and divine law than there is between an inferior prelate and human law. The vicar cannot do all that his principal can; so the Pope, Vicar of Christ upon earth, cannot do everything that Christ can, *e.g.* institute new sacraments, abrogate the old ones, grant leave for simultaneous bigamy, dispense the bond of *matrimonium consummatum*, &c.

11. But the Pope can interpret the divine law and declare that in certain cases, on account of special circumstances, it does not bind, *e.g.* should anything iniquitous result from the observance of the divine law. As recourse cannot be had to God, He would not be the wise and good Master of the house had He left His people without one who, in doubtful and difficult cases, can interpret and declare His law, and thus meet their necessities.

12. The Pope can, for a reasonable and just cause, dispense in every ecclesiastical law.

13. As regards episcopal power of dispensation the following must be noted.

(1) A bishop cannot dispense from the Sacred Canons, Apostolic Constitutions, and the decrees of General Councils except in the cases which are allowed or conceded to him, *i.e.* where the law says *quod possit dispensari*.

(2) On the other hand there are special cases in which, by common law or by a reasonably presumed licence of the Pope, a bishop can dispense, *e.g.*

(a) In a case of great necessity or utility or sudden emergency.

(b) When there is peril from delay, and approach to the Pontiff is difficult.

(c) When there is a lawful custom which must be immemorial.

(d) In doubtful cases. Here the bishop can either grant the dispensation *ad cautelam* or declare that none is required.

(e) By virtue of a special delegation, the limits of which are expressed in the faculty.

(3) In the first four cases the bishop acts by his ordinary power, but he can only dispense for individuals not for an entire diocese.

(4) A bishop can dispense with synodal laws, except when they have been confirmed by the Pope *in forma specifica* or if the constitution have the nature of a contract.

Ferraris,  
*In verb.*

(5) He cannot dispense with provincial laws.

14. The dispensations which are of ordinary episcopal power are vested in the chapter *sede vacante*.

15. Dispensations must be interpreted strictly and do not allow of any extension.

16. Canonists do not agree whether a dispensation cease to be valid if the cause for which it is granted ceases to exist before the dispensation is executed.

17. The Council of Trent decreed :

Sess. xxii.  
cap. 5, d. 7.

‘Dispensations, by whatsoever authority they are to be granted, if they are to be consigned out of the Roman Court shall be consigned to the ordinaries of those who shall have obtained them. And as to those dispensations which shall be granted as graces, they shall have no effect until the said ordinaries, as delegates of the Apostolic See, shall have first ascertained, summarily only and extra-judicially, that the terms of the petition do not labour under the vice of subreption or obreption.’

18. Smith gives the following practical rule of conduct :

‘When a priest has written or sent a messenger to the bishop or chancellor for a dispensation or for faculties to absolve from *reserved* cases, he may, upon reasonable cause, marry the parties for whom he has asked the dispensation, or impart absolution from reservations, even before he receives the answer of the bishop or chancellor, provided he has reason to believe that the faculty was really granted at the time.’ In a note the author makes it clear that this is not a *presumptive* dispensation, for the bishop is actually applied to ; nor is it acting with a doubtful jurisdiction, for he is acting with the knowledge that the bishop has received the application which is one that is never refused.

I. p. 6

## DISTRIBUTIONS

1. Distributions are personal stipends from the income of the church (over and above the prebend [*q.v.*] or the certain portion belonging to a benefice) which are paid to canons, and *beneficiati* of a cathedral who are personally present at the public worship.

2. Distributions are not part of the *fructus* of the benefice ; as they are uncertain and casual, acquired by work done and by actual presence at the office and mass. Therefore they are not to be expressed in the value of the benefice.

3. Distributions have been instituted in favour of divine worship, so that canons and others may more promptly and diligently attend the services ; for some may attend for the stipend who would not attend for any other reason.

4. The Council of Trent decreed :

'Whereas benefices were established in order to the performance of divine worship and the offices of the Church ; to the end that the divine worship may not in any respect be diminished, but due attention be paid thereunto in all things ; the Holy Synod ordains that in churches, as well cathedrals as collegiate, where there are no daily distributions or so slight that they are probably disregarded, a third part of the fruits and of all proceeds whatever and revenues—as well of dignities as of canonries, personates, portions, and offices—shall be set apart and converted to the purpose of daily distributions to be divided amongst those who possess dignities and others who are present at the divine service, according to that proportion which shall be settled by the bishop—even as the delegate of the Apostolic See—at the time of the very first deduction made from the fruits, saving, however, the customs of those churches wherein those who do not reside or who do not serve receive nothing or less than a third, all exemptions and any other customs, even though immemorial, and all appeals whatsoever notwithstanding. And upon the increasing contumacy of those who do not serve, they may be proceeded against according to the provision of the law and of the sacred canons.'

Sess. xxi.  
cap. 3, d.r.

5. The right, therefore, to share in the daily distributions pertains to canons and other beneficed clerics who are bodily present and truly in residence. Corporal presence as well as actual residence is required ; and the corporal presence is required in the choir : that in the church only does not suffice.

6. This law, however, has certain exceptions :

(1) A sick or a blind canon or *beneficiarius* shares in the distribution ; and such times of absence are not to be reckoned as vacations. But this only applies to those who reside when in health.

(2) Those who are absent for a just and reasonable bodily necessity ; and those who, having been unjustly excommunicated, have been judicially absolved share in the distributions.

(3) Also those absent for the evident utility of the Church, *e.g.* a canon acting as procurator for the chapter, accompanying the bishop *ad limina* or going to Rome in his name. Three months' absence is allowed for the visit *ad limina*; but only one month is allowed in the last case.

(4) Those who are absent from choir when they are assisting the bishop celebrating pontifically in the cathedral or in the city are not deprived of their share in the distributions. But this does not apply to canons when on visitations.

(5) The canon penitentiary, when hearing confessions during the time of office, is not counted as absent from choir.

(6) Also the canon theologian on the days of his lectures is counted as present in the choir.

(7) Also those who, without other stipend, preside, for a time, at the organ. Also those who are absent, with leave of the bishop, for a retreat in a religious house. But this must not be in Advent, Lent, or during the solemn festivals.

(8) Also in the case of jubilarians, *i.e.* those who have passed forty years in diligent attendance; these are lawfully excused from choir for the rest of their lives.

7. There are cases of absence when persons are forbidden by law to share in the distribution, *e.g.*

(1) Canons who are absent in Rome on business of the chapter against their ordinary.

(2) Synodal examiners when examining are considered as absent.

(3) Canons willingly saying mass during office, or absent for the sake of study, are counted as not present in choir.

(4) If chapter be held during the hours of service, all present at the meeting are absent from choir.

(5) The vicar general, if a member of the chapter, only shares in the distribution when he is in choir dress and in his canon's stall:

(6) The same applies to those who hold prelacies in the Roman court.

(7) Those who do not chant with the others in choir are to be counted as absent.

8. The proportion of the prebend set aside for distribution is a third, and this sum should be divided according to the number of sessions that the chapter holds daily for divine worship. At the end of the month, or quarterly, the whole collective sum of the distributions should be divided in proportion among those who have

S.C.C.  
16 April,  
1633

attended. Hence the fines incurred by absentees go to increase the shares of those who have been present.

### DIVINE OFFICE

1. The Divine Office is part of the public worship of the Church.

2. In its origin it consisted first of vespers and lauds. The vigils (now called matins) were originally the private prayers of the faithful; the public prayer began in the evening with vespers, and in the morning with lauds, which were followed by the Sacrifice.

3. In the course of time the monks instituted as private devotions the Little Hours and Compline, and finally these were adopted by the clergy and made part of the *cursus*.

4. By law the obligation of the Divine Office comes upon all who hold benefices; and one who does not fulfil this obligation is bound to restitution, since the question of justice enters into the case.

5. By custom it has also come to be a duty of all clerics in sacred orders.

6. By law it also obliges religious *conventualiter*, and by custom it may bind individuals out of choir who are not in sacred orders.

7. In the faculties sometimes given to say the Rosary instead of the Office, the Holy Office decreed that the whole of the Rosary is to be understood; but it is to be left to the prudent will and conscience of the bishop, after considering the peculiar circumstances of persons, to commute it into the third part or to prayers answering to a third part.

2 July,  
1884  
Koenig,  
Com. in  
Facultat.  
Apost.  
p. 425

### DIVISION OF PARISHES AND MISSIONS

1. Dividing parishes is a kind of alienation (*q.v.*), for it is taking away from one parish a part of its territory. While this may sometimes be necessary, yet, as it may be injurious to the mother church, the law, regarding it as in kind an alienation, requires all the formalities for such to be observed. Otherwise the division is null and void.

2. The lawful reasons for dividing parishes are necessity and utility.

3. The rector of the parish must be summoned and heard. If he will not consent to the division, and the bishop, after hearing the rector, still judges there to be a just cause, the division can proceed.



4. Should the parish be vacant, the bishop must appoint a defender of the parish, who is to be heard in defence of the existing rights.

5. Besides the rector and the defender, the parishioners and others interested must be cited and heard.

6. Among the just causes are :

(1) Peril of souls.

(2) Distance from the church. But if assistants can minister the sacraments in convenient chapels, the just cause for division does not exist.

Trent,  
Sess. xxi.  
cap. 4, d.r.

7. In dividing a parish the rights of the mother church should be recognised, *e.g.* by a moderate tax approved by the bishop being paid yearly to it, or by the rector having the right to sing the mass on the patronal feast of the new parish, or by the gift of a candle of certain weight, or some other slight sign of dependence and gratitude.

8. These laws refer to canonically erected parishes. But in missionary countries the following decrees should be noted :

I. West.  
xiii. 5

(1) 'To guard against questions that might arise, we declare that, notwithstanding the deputation of a missionary rector, the bishop, with the advice of his chapter, may build new churches within the limits of the mission over which he is set, and give them a portion of the district should necessity or utility of the faithful people require it. But these limits let the bishops take care to have defined as soon as possible.'

(2) Pope Leo XIII., *Constit. Romanos Pontifices*, 1881, decrees :  
'The bishops are at liberty to divide missions provided they keep to the form laid down by the Sacred Council of Trent as to missions which are truly and properly parishes so called ; but as to others according to the form of the first Provincial Synod of Westminster. Moreover, in order that the interest of the mission and of those that serve it may be the better provided for, we will and ordain that the opinion of the rector shall likewise be asked for, which laudable practice, as we are informed, is already customary ; that if the mission be served by religious brethren, the superior of the order should be consulted ; leaving intact the right of appealing, if the matter require it, from the decree of the bishop to the Holy See, but only *in devolutivo*.'

9. Hence in England at present, while there are no parishes, the process of dismemberment is as follows :

(1) The bishop is obliged to have the advice of the chapter.

(2) He is obliged to ask the opinion of the rector.

(3) Also of the superior of the order if the mission belong to religious.

(4) He is then free to act.

(5) Appeals from his decisions do not lie to the metropolitan, but to the Holy See.

## DIVORCE

1. Divorce is of three kinds :

(1) Divorce from the bond of matrimony. This is called absolute divorce.

(2) Divorce from the bed. This is making lawful the denial of the marriage debt.

(3) Divorce from bed and board. This adds to the above denial that of the rights of cohabitation, but the bond remains.

2. A divorce *a vinculo*, in the case of a marriage that is *ratum sed non consummatum*, can be granted to the faithful for religious profession. This is the common and certain opinion ; and hence, by law, two months are allowed to newly married persons to consider whether the marriage should be consummated or that one party should become a religious. But no such divorce is granted by reason of any vow of taking sacred orders or of simple chastity. Such a divorce, *i.e.* from a marriage only *ratum*, and on account of religious profession, can only be granted by the Pope. Cf. Trent, Sess. xxiv. can. 6

3. Divorce as to the bond of a marriage *ratum sed non consummatum*, if contracted with a diriment impediment (*q.v.*), falls under the competency of the ecclesiastical authority. But the existence of the impediment must be judicially proved by two witnesses who are beyond exception.

4. But divorce as to the bond in the case of a marriage validly contracted and consummated is impossible. Such a marriage is altogether indissoluble except by death. Trent, Sess. xxiv. can. 5.

5. Divorce from bed and board can be granted for a lawful cause. There are seven principal reasons for granting this kind of divorce : Trent, *ibid.* can. 8

(1) Mutual consent, which may be either temporary or permanent, as in the case when one goes into religious or sacred orders, and the other either goes into religion or takes a vow of continency.

(2) Spiritual fornication or lapse into heresy.

(3) Peril of spiritual death, *e.g.* inciting to mortal sin.

(4) Cruelty, or probable fear and grave danger of the same.

(5) On occasion of a pilgrimage.

(6) Contagious disease.

(7) Culpable adultery of one party.

6. This last ground also allows the innocent party to go into religion. If the case be notorious the departure may be made without waiting for the judicial sentence which is required in occult cases.

7. But divorce is not allowed for adultery under the following conditions :

(1) When there has been condonation.

(2) When both have committed adultery.

(3) When the crime is only material, not formal, *i.e.* cases of violence &c.

(4) When the husband by counsel or consent is the cause of the wife's sin.

8. It is well to note that the Council of Trent does not condemn directly as heretical the opinion that matrimony can be dissolved, as to the bond, on account of adultery. It was legislating against the false teaching of Calvinists and Lutherans. These were condemned, not the Greeks.

## DOMICILE

1. Domicile is one of the ways by which a person becomes the subject of a local jurisdiction. There are two kinds of domicile :

(1) Real domicile, which is defined : a residence in some place with the intention of perpetually remaining there. A person may acquire several domiciles if he have a permanent place of residence in each.

(2) Quasi-domicile is defined : a residence in some place with the intention of remaining there for some considerable time, *i.e.* for six months.

2. A person with a domicile, either real or *quasi*, must be distinguished from :

(1) A *vagus*, who is one who has, in fact and intention, given up his domicile and wanders, hither and thither, with no intention of staying in any place.

(2) *Peregrinus* is one who is on a journey, and has the intention of returning to his own domicile as soon as the journey is completed.

3. A real domicile is preserved either by expressed words or by significant acts, *e.g.* by a ten years' residence, unless this

be on account of some accidental cause which, when it ceases, brings the residence to an end.

4. Domicile is not lost by going away or by a long absence, but requires the intention of staying away altogether to be manifested either by words or signs.

5. Quasi-domicile is not acquired, as some say, by one month's residence, but by such a residence as accompanies the intention of remaining for the greater part of the year. One month's residence affords grounds for a presumption if uncontradicted by certainty.

6. The S.C.C. 28 August, 1864, decreed that simple enrolment on the list of inhabitants of a place was not sufficient; for domicile in ecclesiastical matters is not to be ruled by local civil laws of the country, but by the provisions of the canon law.

7. The S.C.P.F. on 7 June, 1867, issued the following instruction : *Collo-*  
*tanca*  
*S.C.P.F.*  
*n. 1407*

'There are two requisites for that quasi-domicile which is required in these cases: namely, residence in the place where the marriage takes place and the intention of remaining there for more than half a year. Hence, if it be legitimately proved that both have, or either of the parties has, the intention of remaining for more than half a year from the date of the concurrence of the two events, namely, this intention and the actual residence, it must be decided that a quasi-domicile has been acquired, and that the marriage that has taken place with this qualification is valid. But if there be no absolute proof of the aforesaid intention, recurrence must be had to such indications of it as may be forthcoming, and may furnish a moral certainty. But in matters of this secret and internal nature it is difficult to get such indications as will render the judge secure; and hence the rule laid down by the Supreme Pontiff Benedict XIV. must be strictly adhered to: namely, that it must be seen whether for a month or more previously to the marriage one or both were living in the place where the marriage took place; and if this is found to have been the case, it may lawfully be presumed that there was the intention of remaining the greater part of the year, and that a domicile had been acquired, and that the marriage was accordingly a valid one. But if the lawful presumption arising from evidence of a month's duration be disproved by facts to the contrary, by which it is surely and abundantly clear that the aforesaid intention of remaining in no sense existed, then it is clear that a contrary determination must be arrived at, for presumption must give place to certainty. Moreover, it is clear also that actual residence is powerless to create a quasi-domicile,

if the party dwell in the place as a wanderer or traveller, and not as a resident, as do people who have a genuine and properly so-called domicile in the same place.'

*Foria v.*  
6 May,  
1886

8. The Holy Office decreed that in the United States of America those who pass from one place where the Tridentine laws of clandestinity bind to another place are to be considered as acquiring, for the purpose of marriage, a quasi-domicile provided they remain in the new locality for the space of at least one whole month. There is no necessity in such a case of inquiring whether they intend to remain for the greater part of the year.

9. As regards the domicile of certain persons it is to be noted that

(1) One who is not *sui iuris* retains, until he renounces it, the domicile of his father or guardian.

(2) A widow retains that of her late husband until she renounces it.

(3) Public officials, professors of a faculty, or students, or those staying in a position which is not permanent acquire a quasi-domicile in the place where they stay for some time with the intention of remaining there for at least six months. They also retain their true domicile elsewhere.

(4) Students of a seminary or college, girls in schools or convents, acquire a quasi-domicile in the parish in which they live. They also retain their true domicile elsewhere.

(5) Domestic servants have their domicile in the parish in which they live.

(6) Soldiers must be married by the *parochus* of the place where they stay in barracks, not where they happen to be when on an expedition.

(7) Prisoners, if they be perpetually imprisoned or for a notable time, acquire the domicile there, and can be married by the chaplain, but not if they are only there for a short time.

Benedict  
XIV.  
*Inst. Eccl.*  
83, n. 13;  
and *Inst.*  
88, n. 3

(8) Those in hospitals do not acquire a domicile there, but if on account of a grave infirmity they wish to be married, the leave of the parish priest of their domicile or quasi-domicile must be had or that of the ordinary.

10. The Fourth Westminster Council decreed :

xv.

'To the ordinary it belongs to judge whether those who are called *vagi* be truly *vagi*, and to give them permission to contract marriage; it is for him to judge whether strangers who have come hither are sufficiently under his jurisdiction whether by domicile or quasi-domicile in the sense in which it is understood by the law, or, at any rate, by delegation from the ordinary of those contracting.'

## DONATION

1. A donation is the legitimate transference of a thing belonging to one person to the *dominium* of another.

2. Donation begets no promise until it has been accepted ; hence before acceptance a donation can be freely withdrawn except in the case of donation *ad pias causas* if this have the nature of a vow.

3. Among the kinds of donations recognised by canon law are :

(1) Pure donation, *i.e.* unconditional.

(2) Impure donation, *i.e.* conditional, limited by time, certain or uncertain.

(3) Gratuitous donation, *i.e.* based solely on liberality.

(4) Remuneratory donation, *i.e.* based on services received.

4. But the chief kind is : Donation *inter vivos*, which is, excepting in very few cases, irrevocable. The subdivisions are :

(1) Real, which is either donation based upon liberality, or on merit or is reciprocal.

(2) Conventional.

5. For practical purposes we may also distinguish gifts :

(1) As given to the Church or to the priest officially.

(2) As given to the priest as a personal gift.

6. The Church has power to accept gifts both from her living children and by testament or legacy ; and these gifts are ruled by the laws affecting alienation (*q.v.*). For a just cause gifts offered, but not accepted, can be repudiated.

7. The Councils of Westminster thus decree on the question of donations :

(1) ' In every mission the moneys which are contributed by the faithful, in the ways hereafter described, are to be accounted Church property and not as gifts to the priest. For from this money he must provide not only for his own honest support, but for the expenses of religious worship, for the maintenance of the fabric, for paying debts if there be any, and for other wants. II. West.  
viii 9

(2) ' Whatever money comes to the mission by these means should be considered as belonging, not to the priest himself, but to the general wants of the mission. 11

(3) ' It is also to be generally understood, according to a rule of canon law, that things adapted for ecclesiastical purposes given to a missionary are, unless there be proof to the contrary, given to the mission. But things that have a personal use are presumed 13

to be given to the priest personally, as are such sacred things as are given expressly by a flock to a priest as a token of gratitude or affection.

I. West.  
xxv. 8

(4) 'A priest should be careful not to incur any suspicion of avarice by interfering in the making of wills, especially if the dying person leaves a portion of his possessions for the benefit of the Church or the poor. He should not, however, be deterred by the foolish clamour of some persons from doing his duty of admonishing those who have been guilty of unjust rapine, that now, at length, they make restitution; and also of exhorting those who have never shown mercy to the poor, at least now to redeem their sins with alms.'

### DOUBT

1. In law there are two kinds of doubt to be noted :

(1) *Dubium iuris*, in which the judge doubts whether a particular article of the law applies to the fact before him.

(2) *Dubium facti*, in which the judge doubts whether the fact that is controverted has been sufficiently proved.

2. The judge does not doubt abstractly about the law but only concretely : that is, relatively to one particular case on account of the special circumstances surrounding it. Thus doubting, the judge should decide *ex intima sui animi sententia*; for he is the public interpreter of the law, and this interpretation is jurisprudence. But the judge must always bear in mind that *summum ius* often makes *summa iniuria*.

3. If the doubt be, in reality, about the law itself, whether it exists, whether it has been abrogated, or whether a contrary custom exists, we come unto the question of probabilism. Innocent XI. condemned this proposition : *Probabiliter existimo iudicem posse iudicare iuxta opinionem etiam minus probabilem*, as being too wide, embracing even the very least grade of probability; but especially, as D'Annibale remarks, because it is false *quoad actorem*—that is, the plaintiff.

4. There are two axioms that have to be remembered in cases of *dubium iuris*.

Reg. 11,  
Iuris, in 6

(1) *Cum sunt partium iura obscura, reo favendum est potius quam actori.*

Reg. 65,  
ciusd. tit.

(2) '*In pari delicto vel causa potior est conditio possidentis.*

Hence, by keeping a *via media* between probabilism and tutiorism, by the principle of possession, a judicial decision may be safely arrived at. As a doubtful law does not bind, so a judge

*in dubio legis* should give sentence *pro possessore*, especially in matters favourable.

5. If the principle of possession do not enter into the case the judge should decide, after weighing all the facts, what he considers to be the more equitable and convenient to the concrete case before him. For when *ius positivum* is not expressed, natural equity has to be followed.

6. The above principles are of application only in civil cases, for in criminal matters the side of the guilty is always to be taken, although the law be only *admodum dubia*; because no one is presumed to be wicked or criminal until he be proved to be so. Lega,  
Praellec-  
tiones,  
vol. i.  
p. 112

7. When the doubt is as to the fact, then all canonists hold that the balance is in the favour of the defendant; according to the axiom, *Actore non probante reus absolvendus est*.

8. The duty of the judge is to apply the law to some concrete fact; hence acting *ex officio* he must judge from the evidence before him whether the fact exists or not. *Ex actis et probatis iudicandum esse*.

9. The judge can proceed in two ways :

(1) At the instance of the parties; in which case he has only to attend to the proofs they bring before him.

(2) Officially; in which case he judges as a public person and has his knowledge only *ex actis et probatis*.

Hence, if the facts or adjuncts of the facts are to be learnt in no way *ex actis et probatis* the judge cannot take them into account in passing sentence, excepting when the facts be notorious, for *in notoriis nulla probatio*. And, with this exception, he has to proceed according to the evidence even if this be against his own private knowledge. This is the common teaching as regards *dubium facti* in civil cases.

10. Though the judge has to proceed *ex actis et probatis*, even against his own private knowledge, it is his duty to do all he can to clear up the doubts in the pleas or counterpleas. Hence, he must not only assign an advocate to the party that is unrepresented so that no one shall be condemned without defending himself, but also, by more searching examination both of witnesses and of their evidence, make it more possible to square the facts of the case, as put before him, with the more certain knowledge that he himself possesses. In this way the judge endeavours to solve the *dubium facti*.



## DOWRY

1. The term 'dowry' is used in two senses.

(1) The endowment of a church. *See* CONSECRATION.

(2) The sum of money, fixed by the lawful superior, which is given to a monastery for the support of a nun professed therein.

*De  
Synodo,  
lib. xi.  
c. 6, n. 5  
Tit. Moni-  
alis, art.  
ii. n. 18*

2. In this last sense true simony (*q.v.*) is committed where there is an agreement of giving a dowry as the price of profession. But even a rich monastery can accept a dowry if it be spontaneously offered; and Benedict XIV. holds that it can also be asked for, while Ferraris holds that dowerless women should not be admitted without a dispensation.

3. For nuns in simple vows it belongs to the bishop to fix the amount of the dowry.

*Bouix, De  
Regulari-  
bus, vol. i.  
p. 664  
Craisson,  
2737*

4. The dowry cannot be assigned to the convent before profession except by a received custom.

5. A dowry cannot be alienated without apostolic leave.

6. If a nun under simple vows leave her monastery the dowry is to be returned; but, if she be solemnly professed, the *dominium* has passed irrevocably to the monastery. But in all these cases the bishop will be careful to take all the circumstances of time and place into consideration.

7. If a nun leave one order for another her dowry is to be handed over to her new house, especially if she will not be received without it.

## DUPLICATION

*See* MASS, § 2

## ECCLESIASTICAL PROPERTY

1. The Church can lawfully possess property either moveable or immoveable. She has this faculty, not by grant of the civil power, but *iure divino*, as well as by natural and positive law. While the more common opinion is that God alone is the true proprietor of all ecclesiastical property, and that the Pope is the supreme administrator, the case of alienation shows that the Supreme Pontiff exercises the rights of a true proprietor, and is such in fact.

2. The Council of Trent excommunicates *ipso facto* all usurpers of ecclesiastical property; and the Constitution *Apostolica Sedis* § I. cap. xii. specially reserves to the Pope the cases of all invaders, destroyers, or holders, directly or indirectly, of the property of the Roman Church, or of those usurping, disturbing, and keeping supreme jurisdiction over them, or of those who help, counsel, or favour them.

Trent,  
Sess. 22,  
cap. 11,  
d. 7.

3. The Church can acquire property by first fruits, tithes, offerings, endowments, and by will. As first fruits and tithes have practically no existence in English-speaking countries it will be sufficient to discuss the other ways of acquisition.

4. Offerings include whatever is offered to the Church in any way, at the mass or outside of the mass, in the church or outside, such as for funerals, or the administration of the sacraments, or the exercise of an ecclesiastical office. Under this head also come alms for masses, gifts to sanctuaries, stole dues, and those offerings called *casualia*. For the validity of the donation (*q.v.*) there must be acceptance on part of the Church; and while the *dominium* passes to her, she can accept an offering made with a particular condition as to its use. Such a condition must always be scrupulously observed so long as the need exists and the trust remains intact.

5. Endowments or dowry (*q.v.*) are for the permanent support of the church and for the clergy of that church. According to common law, a church is not allowed to be built unless the means of due support are provided; and if a bishop permit a church to be erected without this due endowment, and the founder cannot make the dotation, the bishop himself is bound to make good the deficiency.

6. Wills afford another means of acquiring ecclesiastical property. Formerly the Church exercised the duty of establishing the last testaments of the faithful. The Church can oblige executors and trustees to fulfil their duty concerning pious legacies; but now, as the civil power has taken over all questions of probate, care must be taken, both in making and executing wills, to observe all the formalities required by the State. It is not fitting to receive benefit by will from those who are notorious breakers of God's law lest it should seem as though the Church co-operated in their sins. 'Let thy money perish with thee.'

Acts viii.  
20

7. If the *dominium* belong to the Pope, to the bishop belongs the care and wardship of the Church property within his jurisdiction. Zitelli (p. 50) says that the bishop should determine

according to the requirements of the civil law the safest way of keeping and handing on to his successors all ecclesiastical goods. A bishop, without the leave of the Holy See, has no power of alienating or of interfering with the intentions of benefactors. He is the administrator of the Church property.

8. What comes from the Church should return to the Church. Hence all sacred vessels, vestments, &c., except those bought by private money, belong to the Church.

9. Canon law admits of a prescription of 100 years against the Church ; and of thirty years in the case of the claims of one church against another.

10. Church property is considered by canonists to be free from lay jurisdiction and taxation—at least from such imposed after the property has been accepted by the Church.

11. As in English-speaking countries the State claims the supreme *dominium* over all property, it is necessary to modify, in practice, the active assertion of the inherent rights of the Church over ecclesiastical property ; and, for material safety, to observe the civil laws. The State refuses to recognise the Church as an actual corporation with the power of holding property in her own name ; hence the civil power deals only with specific individuals. Church property is therefore held by trustees ; and it is most important that these should understand not only the nature of their trusts, but also the obligations both of the canon and of the civil law. The duties of trustees by canon law are summed up in a word : being only administrators, they have no power of alienation (*q.v.*). Their duties as regards the civil law are defined by the terms of their trust and by the various laws of the State concerning such trusts. The Church has no desire to provoke a conflict with the civil power about ecclesiastical property.

I. West.  
xiv. 4

12. The particular laws relating to Church property in England are given in the Westminster decrees :

(1) 'It is also fitting that the bishop should select from the body of his chapter or from his clergy prudent men to help him in the temporal administration of the diocese. He should often use their advice so that pious legacies may be administered in the best way possible and maintained in safety ; and that the collections of the faithful may be distributed and applied wisely, profitably, and without any party spirit.

(2) 'Goods which are given by the faithful for the propagation and ornament of religion, for the support of the clergy, the relief

of the poor, and other pious uses must be considered as made to God and the Church; and the administrators or guardians of them, whether ecclesiastics or laymen, are to be deemed nothing more than dispensers of them and to give an account to God. As *here now it is required among the dispensers that a man be found faithful* in those things which concern the right administration of ecclesiastical goods, it seems well that in this synod we should treat this matter more fully, inasmuch as having been occupied with matters more important in the First Provincial Council, we deferred this matter to a more convenient time. II. West.  
viii. n. 1

(3) 'Therefore every effort must be made to determine (if there be any doubt) the intention and the mind of the donor or testator of each fund, and that the fruits thereof may be applied most accurately to the use defined by him. Ibid. n. 2

(4) 'If this intention does not appear from any certain document, the rules and canons, by which a safe judgment may be formed concerning such a will, should be observed.

(5) 'Whenever a church or school or any other building destined for the uses of religion is erected or provided, either wholly or in part, from money contributed by the faithful, or even granted by any society administering the alms of pious Catholics, every edifice of this kind is to be considered as belonging for ever to that place. Ibid. n. 4

(6) 'The same judgment must be passed for any benefactor if such buildings have been provided anywhere, unless it is most clearly proved that he declared that in such an erection he did not intend the advantage of that place and of the faithful, but that he wished to confer a gift to an order. (The rules laid down in this and the preceding number as to the rights of foundation are to be applied only to new foundations in the case of regulars.) Ibid. n. 5

(7) 'But the bishop shall not be allowed, on this account, to take away a mission lawfully entrusted to any religious order. These rules regard the case in which that religious body either cannot or will not retain the care of a mission, if, for example, by a superior it be removed from the place, or for any other reason, it ceases to exist there altogether and not for a time only. Ibid. n. 6

(8) 'If, however, any mission be founded exclusively or for the most part by funds belonging to any religious body, which for just cause may wish to leave and go elsewhere *in perpetuum*, we exhort that a distinct agreement be made between the bishop and the Ibid. n. 7

superiors of the order as to what has to be done in the case; that, on the one hand, just rights may not suffer, and on the other scandal may not arise nor grave loss of souls ensue.

*Ibid.* n. 8

(9) 'Much less is it lawful for any cleric, or for the bishop himself, to alienate Church property, as is evident from almost numberless decrees of canon law. If, however, on account of reasons approved by the law itself, such alienation be necessary, the priest can never effect it without the authority of the bishop, nor the bishop without those precautions which are required by canon law.

*Ibid.* n. 9

(10) 'In every mission, the moneys which are contributed by the faithful in the ways hereafter described, are to be accounted Church property and not as gifts to the priest. From this money he must provide, not only for his own honest support, but for the expenses of religious worship, for the maintenance of the fabric, for paying debts if there be any, and for other wants. Wherefore, if any priest leave a mission during the course of the year, he has no right to his proportion of the yearly income until the amount justly due for these expenses be deducted. In like manner what he has provided for the use of the Church from the income of the church—for example, candles, wine for the most holy Sacrifice, sacred furniture—these he should leave behind him, without compensation, unless he can show that the supply is excessive.

*Ibid.* n. 10

(11) 'All are aware that there prevail different methods of raising money for the support of missions. The following in particular we do not disapprove of, until by the charity of the faithful something may be provided. They are: (a) Letting of seats or places in the church to certain persons or families by whom a fixed compensation is given to the church; (b) collections made in the church at the offertory; (c) according to a custom prevailing generally in England, payment of a fixed sum according to the quality of the place to be occupied, by those who have not an assigned place and are unwilling to occupy what is called the free space; (d) sermons by some distinguished preacher of the Word of God, after which the alms of those assisting, who often flock from other congregations and make their offering, are collected for the general or particular use of the church or for some special purpose; (e) collections which are either made from house to house, by persons appointed for the purpose, or by societies and confraternities lawfully appointed, or which are gathered from *tens* or *hundreds* . . . or

contributions made by the more wealthy at fixed times or yearly.

(12) 'Although it is certainly much to be desired that many of these methods of maintaining the church could be done away with, yet experience has taught that as yet' it is impossible altogether to dispense with such helps. Therefore where one or more of these methods prevail they ought to be so kept on that no innovation be introduced without the authority of the bishop. Especially the free space should not be diminished nor narrowed without consulting him. But whatever moneys come to the mission by these means should be considered as belonging, not to the priest, but to the whole wants of the mission. Therefore, whatever furniture, either sacred or domestic, the priest may acquire from these sources, or whatever he expends in keeping in repair the church or other buildings in any way belonging to it, in this expenditure he is providing not for himself, but for the mission from goods belonging to it. *Ibid.* n. 11

(13) 'As soon, therefore, as any priest enters on a mission, let him receive from the vicar foran or from some one deputed by the bishop an inventory of all property belonging to the mission. He is bound to keep the furniture and buildings in good repair, yea, rather to better them, that he may deliver to his successor as much at least as he received himself. Should he provide for the renewing of what is grown obsolete and squalid, or procure something new and more elegant for the greater beauty of the place, a distinction must be made as regards the sources from which these come. *Ibid.* n. 12

(a) 'If the priest have procured these things from his own property or from the gifts of friends well disposed towards him, or, in fine, from that portion of the income of the church which pertains to him for his honest maintenance, they are to be considered as his own, provided that he has kept all that he received in good order.

(b) 'But if these things were procured out of the general revenues of the church, or by gifts and collections from the congregation, or by money granted by the bishop or the administrators of the temporalities of the diocese, they are to be deemed entirely the property of the mission; nor is it lawful for the priest on any account to claim them.

(14) 'It is also to be generally understood according to a rule laid down in law that things adapted for ecclesiastical purposes given *Ibid.* n. 13

to a missionary are, unless there be proof to the contrary, given to the mission. But things adapted for personal use are presumed to be given to him, as also are such sacred things as are given expressly by a flock to a priest as a token of gratitude or affection.

*Ibid.* n. 14 (15) 'Retributions for masses are the property of the priest. In like manner, where it is the custom, a very ancient one, indeed, in England, of making presents to each priest at Easter and Christmas, these gifts belong *de iure* to them. But the priest should be on his guard lest he incur the suspicion of receiving anything on account of administering the Sacrament of Penance.

*Ibid.* n. 15 (16) 'As to the application of moneys derived from stole fees no one and the same practice obtains throughout the whole Church. For though the Church detests all filthy lucre on account of which money is extorted or exacted for the celebration of the sacraments, yet the Council of Lateran, held under Innocent III. in the year 1215, prescribed that the laudable customs, in accordance with which offerings were made by the faithful to the ministers of the Altar, should be observed. The proceeds derived from this source should be adjudged by the ordinary to belong to the priests, though they may be distributed in different ways in different places. That distribution seems to be the best which is most conducive to alleviate the burthens of the mission.

*Ibid.* n. 16 (17) 'Whilst therefore we forbid anything to be asked for (and much more anything to be exacted) before the celebration of baptism and matrimony, and even after the celebration as *de iure*, we leave it to the prudence of bishops to determine in their diocesan synods what seems more adapted to the customs and state of places. Especially should they most vigilantly correct all abuses, if any exist, as to the amount, or to the exaction of these offerings, by enforcing everywhere an equitable arrangement.

*Ibid.* n. 17 (18) 'Whosoever presides over the administration of any mission, whatever title he may bear, should by all means keep a day book of all the receipts and expenses of the mission, both of which every day should be entered most accurately in their proper order. He should keep also another book, commonly called a ledger, to which he will transfer, every month, or three months, all things contained in the other book arranged in order, according to the heads under which each sum, received or expended, ought to be placed.

*Ibid.* n. 18 (19) 'Every administrator should keep what is called an open account at some bank in the names of two respectable persons besides his own. These persons should know that they are

named only to secure the money from any danger of being lost, and they ought not to interfere in the administration of it. If any of these fail, through any cause, the two that remain will take care that another be chosen by the bishop to fill his place. Wherefore no administrator should keep in hand more than £20 belonging to the mission, that is, of money which is not his own property, but should carefully place it in the bank.

(20) 'No administrator of a mission should draw up legal documents concerning Church property without the expressed authority of the bishop, who will not hesitate to consult lawyers most skilled in these matters, and so subject everything to the most accurate revision. *Ibid.* n. 19

(21) 'All buildings belonging to a mission should be insured against fire by an annual payment to some insurance company. *Ibid.* n. 20

(22) 'Everyone seeking alms of the faithful ought to be furnished with the autograph of his ordinary or of his own superior, stating the object of his pious quest and verified by the ordinary of the place in which he makes the quest, together with the condition expressed in it that he is bound to give an accurate account to the bishop or to his own superior of all the sums collected by him, specifying also the places in which he has stayed, the persons from whom he has received them, and the length of time he has remained in each place. *Ibid.* n. 21

(23) 'If any of the faithful wish to make a foundation for an anniversary or a daily mass, the matter is to be arranged with the bishop; and the sum contributed for this object must be placed in useful investments, so as to produce annual interest for a perpetual endowment, the canonical sanctions being observed as far as the circumstances of time and place will allow.<sup>1</sup> *I. West. xxv. n. 6*

<sup>1</sup> A note regarding English legislation concerning Catholic ecclesiastical property and trusts.

The English state does not consider the Catholic Church in England as a corporation. Its property, therefore, is held by trustees, who are responsible to the common law of the land and in *foro ecclesiastico* to the canon law. The present state of the law is as follows:

(1) Trusts or bequests made in favour of religious orders of men bound by monastic or religious vows are declared illegal and void.

(2) Any trust or bequest for the purpose of obtaining prayers and masses for the dead is also illegal and void, being considered by the Court as devoted to superstitious uses. This difficulty cannot be got over in any way by the creation of a secret trust mentioned in the will.

(3) Trusts are subject to the rule against perpetuities, unless they come within the wide class of exceptions made in favour of charitable purposes. A distinction is to be made between pious uses and charitable purposes.

(4) When the R.C. Charities Act of 1860 was before Parliament the question



Cap. xxix.  
§§ 270-277

13. The laws relating to ecclesiastical property in Ireland are laid down in the Maynooth Synod (1875). After ordering that a twofold inventory should be made, one copy of which is to be sent to the bishop for the diocesan archives and the other kept among the parish records, the fathers of the National Council go on to say: 'Lest ecclesiastical property fall into other hands on account of the defects of the law, the bishop will take heed that the titles or deeds should be accurately drawn up according to the civil law and in the name of three or four trustees (*curatorum*). These trustees are to be, the bishop of the diocese, the parish priest, or other whose property is concerned, the vicar general or other person prudent, well known for uprightness, and for being versed in matters of this sort. These trustees should meet once a year so as to provide for the security of the aforesaid goods. And if one of them die the others are bound to appoint another in his place. All bishops and priests having possession or administration in any way of such property are bound to make their wills,<sup>1</sup> and these wills are to be kept by the bishop; and to no one *in extremis* will the last sacrament be given unless he makes his will or promises so to do.'

14. In the United States of America the following rules obtain as to ecclesiastical property :

of declaring our trusts was referred by the English bishops to the Holy See. Most of the bishops were in favour of declaring the trusts, but Cardinal Wiseman opposed it, one of his objections being that owing to bequests for masses &c., and conditions which the courts would hold as superstitious, there was grave danger of losing the property altogether. But the Holy See took the opinion of the majority of the bishops, and in 1862 decided that the bishops might declare their trusts in accordance with the Act, except in such cases where there would be danger to the property.

(5) Charitable funds must be administered in accordance with the provisions of the trust deeds under which they are settled.

(6) Catholic charities, with certain exceptions, are now subject to the supervision of the Board of Charity Commissioners, whose jurisdiction is purely remedial and protective, and recognises no other interest at variance with those of the foundation itself.

(7) Trustees are the sole and responsible administrators of the income of the charity within the limits prescribed by the founder. They have no power to deal with the capital or to vary in the slightest degree the prescribed mode of application of the income.

(8) In the R.C. Charities Act of 1860 the second clause lays down that no proceeding shall be instituted as to dealings concerning real or personal estate subject to any trust, gift, foundation, or disposition for any charity prior to the passing of II. and III. of William IV.

(9) Land left has to be sold within a year.

(10) The Trustee Act of 1893 regulates the investments of trust funds, and enumerates the directions in which trustees may legally invest their trust funds.

<sup>1</sup> That is, of course, only and so far as concerns the ecclesiastical property held in trust.

(1) Ecclesiastical property, moveable and immoveable, up to \$100 may be alienated with the leave of the bishop.

(2) The Holy See, 25 September, 1885, granted to the bishops for ten years from the date of the promulgation of the Third Plenary Council a dispensation which allows them to alienate up to and beyond \$5,000.

(3) The pastor is *ex officio* the administrator of the property of his congregation ; but his rights are subordinate to the bishop, to whom belongs the tutelar guardianship and the superior administration of the goods of the diocese : that is, to see that the Church property in each place be wisely administered.

(4) The Third Plenary Council orders all rectors to give in a financial statement every year. 272

(5) The temporalities of parishes can be committed to lay trustees with the consent of the bishop, and these incur excommunication reserved to the Pope if they appropriate to their own use ecclesiastical property.

II. Plenary Council, n. 198  
*Apostolicæ Sedes*

(6) Apart from the ordinary expenditure trustees require the written leave of the bishop for outlays exceeding \$300.

(7) The actual holding of property varies according to the different laws of the States.

(a) Sometimes the bishop is a corporation *sole*.

(b) Sometimes the property is vested in a board of trustees of whom the bishop, the vicar general, and the pastor are necessary members. They may, and generally do, appoint two laymen of the congregation as co-trustees. *See also* FABRIC.

15. As regards the relations of regulars on the mission to the bishop, Leo XIII. decreed the following as regards ecclesiastical property :

Constit. *Romanos Pontifices*, 1881

(1) 'We decree that members of religious bodies are bound to render account to the bishop and to inform him of the money given to them with a view to the missions and how much of it and for what purpose it has been spent, just as missionaries of the secular clergy are bound in accordance with the above-mentioned decision of the said congregation dated 19 April, 1869, and the Instruction of 10 May, 1868.

(2) As regards what moneys and things are to be understood as offered to members of a religious body with a view to the mission the Pope says : 'Reason prescribes, and we also ordain, that in this matter members of religious bodies shall entirely conform to the regulations of the Second Synod of Westminster.'

## EJECTION

1. Religious, professed with simple or solemn vows, who are really incorrigible can, *servatis servandis*, be lawfully ejected from the order.

2. The ruling documents are decrees of S.C.C. 21 September, 1624, and 24 July, 1694, and decrees of S.C.R.D. 12 June, 1883, and S.C.E.R. 4 November, 1892.

3. The following are necessary for a valid ejection :

(1) A grave external and public fault.

(2) *Recidivatio*.

(3) Three useless monitions and corrections.

(4) A process begun according to the constitutions of the order.

(5) Time granted to the accused to make his defence either by himself or by another religious of the same order. If the accused make no defence the superior shall appoint an official defender.

(6) Formal sentence which has no effect if the condemned appeal within ten days to the Holy See, until the judgment thereof.

4. But if from grave causes the above procedure cannot be followed, recourse has to be made to the Holy See for a faculty of proceeding summarily.

5. There is no obligation, only a faculty of ejection which can only be used when the fact of incorrigibility is proven.

6. When a religious is ejected notice has to be sent to the bishop of his place of origin under whose obedience he now passes. Hence such a person becomes again the subject of the bishop who gave him leave to enter into religion.

7. The ejected religious, if in orders, remains perpetually suspended and incurs irregularity if he either exercise his orders or ascend to higher orders. He lies under *infamia iuris et facti*, and cannot, except during appeal, claim support from his order.

8. He is bound to present himself to the bishop of the diocese in which is the convent whence he is ejected. The bishop cannot receive any appeal from the sentence of the regular prelate, and he cannot relax or moderate the suspension.

9. The ejected is bound by the essential vows of religion ; but the obligations of poverty and obedience are suspended as regards execution and observance of many particulars. He acquires administrative power over property.

10. One who was ejected justly is bound to correct his faults and to ask for readmission. He can also compel the order to receive him

again if he can prove by letters testimonial of the ordinary that he is fully reformed. For, as only incorrigibility justifies expulsion, when that ceases so does the lawfulness of this. He is not obliged to go through another novitiate.

11. One who was justly ejected if reformed and refused admittance can, after three times being repulsed, remain in the world and receive the sacraments as a cleric. His suspension can be removed by appeal to the Holy See.

12. If the ejected put aside the religious dress with the intention of never more using it he becomes an apostate (*q.v.*).

## ELECTION

1. Election in canon law is used in two senses :

- (1) In a *general sense*, which includes postulation (*q.v.*), presentation (*q.v.*), nomination (*q.v.*), collation (*q.v.*), recommendation (*q.v.*).
- (2) In the *strict sense*, in which alone it is used in this article.

2. Election is 'a canonical calling of a fit person to a vacant ecclesiastical prelacy by the votes of the lawful electors and confirmed by the authority of the superior.'

3. Hence three points have to be considered :

- (1) The electors.
- (2) Those eligible.
- (3) The mode of election.
- (4) Subsequent proceedings.

### § 1. *The Electors*

4. All members of the body concerned in the election have a right to vote unless they be prevented *de iure*.

5. Electors cannot be compelled to attend an election unless it be a matter of great prejudice to the Church.

6. All, who by right or custom have votes and can conveniently come, must be summoned to the election at a definite time and place. By the omission of such a summons the whole process may be nullified.

7. The summoning of the absent is not of the substance of the election, but it is *de iustitia* in regard of each elector. An absent person, who could come but is not summoned, is held to ratify what was done at the election unless he questions the act and appeals in due form.

8. Those who are lawfully absent have the right to nominate proxies, who must be taken from the body of electors.

9. Electors are bound *sub gravi* to make proper inquiry as to the fitness of the person to be elected.

Trent,  
Sess.  
xxiv.  
c. 1, d. r.

10. They are bound, in the same manner, to elect the more worthy and more useful person to the Church. To elect one less worthy is a manifest injustice, for prelaties, dignities, &c. are common goods.

11. Hence the necessity of the *Tractatus* (q.v.) or the preliminary public discussion of the qualifications of candidates so as to form the judgment of the electors.

12. Those who are excluded by law from electing are :

(1) The demented.

(2) Those suspended *ab officio*.

(3) Those personally interdicted.

(4) Those excommunicated if *non tolerati*.

(5) Those who knowingly elect one unworthy lose *ipso facto* the right of electing *pro hac vice*.

(6) Those who do not belong to the body. Hence in an ecclesiastical election the participation of laymen makes the proceedings null and void unless with papal dispensation.

13. The electors must be free. Hence all threats and promises involve the invalidity of the process.

14. Simony (q.v.) *a manu, lingua vel obsequio*, vitiates an election even before sentence, whether the simony be open or occult.

### § 2. Those Eligible

15. The points to be regarded in candidates for election for any ecclesiastical post are laid down in the Third Council of the Lateran (1179). They are three in number, viz. :

(1) Maturity of age.

(2) Gravity of morals.

(3) Knowledge of letters.

Trent,  
Sess.  
xxiv.  
c. 1, d. r.

16. The more worthy and more useful person must be elected, for to elect one less worthy is manifest injustice, as prelaties, dignities, &c. are common goods. The election of one less worthy at the expense of one more worthy is valid but illicit.

17. The greater worthiness of any candidate is not to be gauged precisely by his greater knowledge or his greater probity of life ; but consideration has to be paid also to the qualifications of prudence, carefulness, capacity for ruling, and other endowments useful for the present needs of the Church.

18. Amongst those who are *de iure* ineligible are :

(1) Those under the canonical age.

- (2) Laics and, in cathedrals, those who are not in sacred orders.
- (3) Those excommunicated *nominatum*.
- (4) Those suspended *ab officio*.
- (5) Those personally interdicted.
- (6) Those who have incurred irregularity (*q.v.*).
- (7) Those who are *infames* either *de iure* or *de facto*.
- (8) Those who already hold offices incompatible with the one for which the election is held.

### § 3. *The Mode of Election*

19. The preliminary *tractatus* (*q.v.*) is to be held; and canonists hold that an election made without this discussion is null and void, since the election does not proceed according to knowledge.

20. The election must be held in a public place and in daylight, unless necessity otherwise commands.

21. Before the election mass is to be celebrated and the Holy Ghost invoked.

22. The oath *de eligendo meliorem* is to be taken by all before the election takes place; and many canonists hold that this oath is one of the essential factors in an election.

23. There are three distinct parts of the election, viz. :

- (1) The designation of the person chosen.
- (2) The elective act resulting from this choice.
- (3) The acceptance of the election.

24. There are three ways of choosing the person :

- (1) By scrutiny.
- (2) By compromise.
- (3) By inspiration.

25. The usual way is by a scrutiny in which the *maior et sanior pars* of the electoral body agrees by voting upon some one candidate.

26. For a valid scrutiny the following are essential :

- (1) The scrutiny must be carried out in general assembly of the body within three months of the vacancy if it be for an episcopal or for a regular church, or within six months if for a lesser prelacy.
- (2) The scrutators must be chosen by the electors.
- (3) They must be three in number, if possible.
- (4) They must belong to the body of electors.
- (5) The voting must be in secret.
- (6) Each voter must be called upon to vote.
- (7) Each vote must be recorded separately.
- (8) Each vote must be given in writing.

(9) The publication of the result must be made in the assembly and at once, *i.e.* as soon as the scrutiny is completed.

(10) Numbers must be compared with numbers, merit with merit, and zeal with zeal; and this collation is to be made immediately after the publication, for it shows the act to have been that of the *maior et sanior pars*. The collation, however, is not necessary if there be an unanimous consent or a majority of two thirds, or even a bare majority.

27. The second way of designation is by compromise. This consists of a commission given by the body of electors to one or to several persons to designate in the place of all. The following points must be noted :

(1) The compromise must be the act of all the electors : unless it results from a pontifical declaration and nomination of the individuals.

(2) It is not necessary that the one or several persons so charged should belong to the body of electors.

(3) A commissary cannot elect himself, but, if otherwise eligible, he can be elected by the others.

(4) The result of the compromise must be observed if the terms thereof be duly observed.

Cf. *Santi*,  
i. p. 63

28. In both these methods the use of lots, especially for non-qualified benefices, is not forbidden, when the fitness of candidates is manifest and after two or three scrutinies each is found to have an equal number of votes.

29. If the voting be equal the president has no casting vote.

30. The third method of designation is by *inspiration*, which is of two kinds :

(1) True inspiration, *i.e.* by a divine revelation.

(2) Quasi-inspiration, *i.e.* when all the electors, without any previous *tractatus*, canvassing, or simony, &c., are moved, as it were by the Holy Ghost, to agree upon one person.

31. In whatever way the designation of the person is arrived at, the next step is the elective act, *i.e.* the election must be proposed to the designated person for his acceptance. The following conditions are necessary :

(1) The election must be common.

(2) It must be made immediately after the publication of the scrutiny or the collation of the votes if necessary.

(3) The election must be offered to the person upon whom the *maior et sanior pars* agree.

(4) It must be verbal.

(5) It must be done in public.

32. The person designated must signify his consent or his refusal, and on consent the elective act is completed and the person becomes *ipso facto* the elect.

#### § 4. *Subsequent Proceedings*

33. Opposition to an election can be made :

- (1) Against the form of proceedings as invalid.
- (2) Against the elect as less worthy or inhabile.
- (3) Against electors as incapacitated by law.

34. The appeal must be in writing and the statements made under oath. It must show reasonable cause for the action, and those making it must express their belief in the truth of what they say.

35. The elect must ask for confirmation of his election from the due authority within three months.

36. If without lawful impediment he neglect to ask for this confirmation he, *ipso facto*, loses his right and the election is null and void.

37. Until confirmation has been granted the elect cannot undertake any administration of the office or prelacy.

### ENCLOSURE

1. The enclosure of religious houses comes from the vow of obedience, but is the subject of direct ecclesiastical legislation.

Enclosure consists of two parts :

- (1) A prohibition to go out without leave.
- (2) A prohibition to allow externs, especially those of the opposite sex, to come within except by leave.

2. The papal enclosure goes with solemn vows ; and, as for women these hardly exist in English-speaking countries, they need not be considered here. As regards men, the law of enclosure forbids women to be allowed within the monastery. Pius IX. declared those who violated the enclosure of nuns, as well as the nuns themselves who do not deserve it, incur excommunication *latae sententiae* reserved to the Roman Pontiff. This refers only to nuns with solemn vows.

Constit.  
Apost.  
Sedix,  
1859

3. The episcopal enclosure for women is to be enforced not so much according to the will of the bishop as according to the received customs of the order. Now if the rules are confirmed by the Holy See it is clear that the bishop cannot change them.

4. The bishop cannot without a just cause deny licence to go out in necessary cases.



5. He can give leave for persons to enter into the enclosure when he thinks fit. In this custom has to be followed.

### ENCYCLICAL

1. An Encyclical is an apostolic letter on some point of doctrine or practice addressed to the bishops of the whole world or of some country.

2. They begin in this form, *e.g.* : *Sanctissimi Domini Nostri Divina Providentia Pii Papae X. Epistola Encyclica ad Patriarchas Primate Archiepiscopos Episcopos aliosque locorum Ordinarios pacem et communionem cum Apostolica Sede habentes—Venerabilibus Fratribus Patriarchis Primatibus Archiepiscopis Episcopis aliisque locorum Ordinariis pacem et communionem cum Apostolica Sede habentibus Pius Papa X. Venerabiles Fratres. Salutem et Apostolicam Benedictionem.*

3. They end up, *e.g.* : *Datum Romae apud S. Petrum, die (iv. Octobris MCMIII.) Pontificatus nostri anno (primo),* and are signed, *Pius PP. X.*

4. An Encyclical must be distinguished from a dogmatic Constitution (*q.v.*).

### EPICHEIA

1. *Epicheia*, or equity, is a judgment on the meaning of a law derived from the rightly presumed mind of the legislator. It is a principle of interpretation of laws, and does not regard the words of the law, even if clear, so much as the mind itself of the legislator rightly understood.

2. The foundation of *epicheia* is to be found in convenience and equity, and it is itself a part of justice.

3. The rules of *epicheia* are :

(1) *Epicheia* is to be admitted if, otherwise, in any particular case the law should become iniquitous and commend that which is unlawful.

(2) *Epicheia* is also to be admitted if what the law prescribes should, in any particular case, be too hard and above the power of human law. But this excessive harshness must be manifest to have any value *in foro externo*.

(3) *Epicheia* also has place if it can be believed prudently that in this or that case the legislator did not wish his law to bind.

(4) In a law which nullifies juridically, *epicheia* commonly has no place, but not always, *e.g.* in the laws affecting clandestinity.

D.  
Thomas,  
2, 2, 9, 120,  
a. 2

*Cf.* Suarez,  
*De Legi-  
bus*, lib i.  
c. 2,  
mm. 9-11  
Schmalz-  
grueber,  
*Ad Tit. de  
Constit.*  
n. 49

*Cf.*  
Schmalz-  
grueber,  
*loc. cit.*

### EPISCOPAL COURT

1. The episcopal court or *curia* is the body of men who are charged by the bishop with the power of administering judicial business, or of assisting him in his external cure of souls.

2. Taking the term in its strict sense the members of an episcopal court are :

(1) The judge. By ordinary right this is the bishop himself or his vicar general, who is known also as the official. But it may sometimes happen in the administration of justice, for the avoidance of the personal element as far as possible, that it is better to appoint some cleric skilled in the law as permanent judge for all causes. *See under the title of JUDGE.*

(2) The auditor (*q.v.*).

(3) The notary (*q.v.*).

(4) The procurator-fiscal or diocesan promotor.

(5) The *Defensor Matrimonii*.

3. To these may be added assessors (*q.v.*), consultors (*q.v.*), messengers, and other assistants if need be.

4. In places where the method of the Commission of Investigation obtains, the body of assessors and auditors are five or three in number, and are appointed in and with the advice of Synod. In England they have for their head one of their own number. In the dioceses of England, Scotland, and America where the Instruction S.C.P.F. *Cum magnopere* is in force the bishop is their head. These, together with the promotor fiscal and a secretary, form the quasi-court.

5. The metropolitan court for appeals is different from that used by the archbishop for diocesan purposes, but its construction is the same.

6. In places where the Commission of Investigation obtains the metropolitan commission of investigation for appeals consists, in England, of three priests chosen out of the seven who are nominated as *assessors* every year by the bishops.

### EXAMINATION

1. An examination is ordered for candidates for parochial benefices, certain offices in the chapter, for confessors, and for those about to be ordained.

2. A new examination is not needed when changing from one parish church to another.

3. Regulars can be examined by the bishop when they seek his permission to preach in other churches than their own. But when once approved they cannot be again obliged to submit to examination by the same bishop except for reasonable cause.

4. The same applies to all priests so far as concerns the examination before approbation for confessions.

5. A new bishop, however, can insist upon re-examining those who seek for his approval.

## EXAMINATION OF WITNESSES

1. In an ecclesiastical trial witnesses need not necessarily be examined in the presence of the party against whom they testify.<sup>1</sup>

2. The examination-in-chief takes place by the party who calls the witness. The other party, then, has the right to cross-examine the hostile witness. This may be done by asking leading questions, and making the examination as searching and particular as possible. By this and by many other means the credibility of the witness can be proved or disproved.

Cf. *Devoti*,  
lib. iii.  
t. 9, § 18

3. This is the discipline of ecclesiastical as well as of civil courts.

4. The early method of procedure in a Commission of Investigation as laid down in the First Westminster says :

(1) 'The witnesses for the case should be examined separately by the president and by others through the president ; and first of all in the absence of the missionary rector ; and this as minutely as possible but not on oath, but if they are willing they may depose that they are ready to repeat their testimony upon oath if the opportunity be given them.

(2) 'With the consent of the witnesses, and at the discretion of the Council, the evidence must be repeated before the missionary rector, and he may examine the witnesses through the president.

(3) 'In the same way the witnesses against the case should be examined.

*Appendix*  
x. 10-14

(4) 'But if the witnesses be unwilling or unable to attend the council, or their evidence be not as complete as it might, two at least of the councillors should be deputed by the council to go to them, and, after visiting this or that place, or in any other way whatsoever in their power seeking out light for settling doubts, they

<sup>1</sup> 'The customs and practices of a particular country concerning the details of judicial proceedings are generally to be followed, even though they differ from those which obtain at Rome.'—Smith, vol. ii. p. 467.

should give an account of their inquiry to the council, so that no means should be left untried for arriving at the truth with moral certainty.'

5. The same method applies to America.

6. Upon the above it is well to note :

(1) The witnesses are to be examined separately ; that is, each witness by himself and not in the presence of other witnesses.

(2) If the witnesses refuse to repeat their testimony on oath or in the presence of the accused, it is *prima facie* evidence against the truth of what they say.

(3) The process of examining through the president seems to be somewhat cumbersome, and places too much responsibility upon the president. If the examinations be left in the hands of the procurator fiscal and of the accused or of his procurator, the president can always interfere to prevent an improper or unjust question being pressed.

(4) The difficulty about the oath will be discussed under that title.

## EXCARDINATION

1. Excardination is a full and perpetual transference from the jurisdiction of one bishop to that of another. The term *cardinare* is used by St. Gregory ; and *incardinare* in the sense of inscribing a name on the list or *matricula* of a church is found in the *Diurnus Romanus*.

2. Excardination cannot be forced upon a cleric ; neither can it be withheld without just reason.

3. The S.C.C. 20 July, 1898, issued a decree *De Clericorum excardinatione et ordinatione*. After stating that by law a person belongs to a bishop in the following ways :

(1) By origin.

(2) By benefice.

(3) By domicile.

(4) By service.

The Sacred Congregation decrees :

(1) Excardination is only lawful for just causes, and has no effect unless a corresponding incardination in another diocese be demanded.

(2) A bishop cannot grant incardination by word of mouth. It must be granted in writing, absolutely and perpetually : that is, without any limitations expressed or tacit ; so that a cleric is

altogether enlisted in his new diocese and takes an oath like that prescribed by Innocent XII. in the Constit. *Speculatores* (1694) for acquiring a domicile.

(3) This incardination cannot be accomplished unless it can be shown by a legal document that the foreign cleric has been released in perpetuity from his former diocese ; and that the bishop thereof (secretly if necessary) gives testimony of his birth, life, morals, and studies.

Trent,  
Sess.  
xxiii.  
c. 16, d.r.

(4) Such subjects, after the transfer, can be ordained ; but in each case the bishop should consider whether the cleric be such as can be ordained without further trial. And he should remember that as 'no one should be ordained who, in the judgment of his bishop, is not useful or necessary for his churches,' so no new cleric should be incardinated except according to the necessity or commodity of the diocese.

(5) As regards clerics of foreign nationalities and laymen more caution and strictness are required in affiliating them. Such are never to be received except after receiving the secret and favourable testimony of their former ordinaries. This gravely binds the consciences of bishops.

(6) Finally, both as to clerics and laics who do not wish or will to use the benefit of excardination, the provisions of the Constitution *Speculatores* are always to remain in force.

S.C.P.F.  
*Collec-  
tanea*,  
n. 1181,  
n. 1182.  
Concil.  
Scot.  
xxix. 4.

4. In places where clerics are ordained *ad titulum missionis* they are bound thereby not only to the diocese, but to the province also, 'so that priests thus ordained may, with the consent of both ordinaries, be transferred from one diocese into another merely by conferring a fresh title without the necessity of taking a fresh oath.' In Scotland a three years' trial is recommended before such transfer be made.

5. A further decree of S.C.C., 14 November, 1903, concerns secular clerics who wish to go to North America or to the Philippine Islands. After referring to a circular sent to the Italian and American bishops on 27 July, 1890, which instructed the former not to allow their clergy to emigrate to America unless they have :

- (1) An excellent record concerning their previous ministry.
- (2) Are of mature age.
- (3) Are likely to edify by their zeal, piety, and prudence.
- (4) And can assign a valid and serious reason for leaving home.

This circular is now applied to all priests who propose to emigrate to America or to the Philippines ; or to make a prolonged visit to those countries without the leave of the Sacred Congregation.

In case of real and urgent necessity the bishops can only grant leave of absence for six months, and they must inform the Sacred Congregation of the permission granted. No priest is allowed to emigrate to North America or to the Philippines without having obtained through his own bishop the consent of the bishop into whose diocese he wishes to be received. Moreover, the European bishop is bound to inform the other bishop by private letter of the applicant's age, moral and intellectual qualities, standing, and efficiency. The bishops of Brazil have lately adopted the same precautions.

### EXCOMMUNICATION

1. Excommunication is an ecclesiastical censure (*q.v.*) by which a Christian is separated from the Church. It is not merely an external separation, but it cuts off the soul of the person excommunicated from the influx of the spiritual life of the Church. It does not of itself separate the soul from its Maker. Hence if excommunication be inflicted upon an innocent person, who is free from mortal sin, it produces no direct effect so far as it concerns his soul.

2. Excommunication is called a spiritual death; and it is the severest punishment known to the Church. Hence it should be only used in the most extreme cases after all other means have been used in vain.

3. The objects of an excommunication are three, viz.:

- (1) To bring back the sinner, *i.e.* remedial.
- (2) To uphold the honour of the Church, *i.e.* vindictive.
- (3) To warn the faithful, *i.e.* repressive.

4. Hence excommunication can be defined as: 'The expulsion from the external and internal membership of the Church, the complete withdrawal of all the graces and privileges acquired by baptism, the separation from the living Body of Christ, and a thrusting back into the helpless state of unredeemed man.' Kober, p. 32

5. Hence clerics who are excommunicated lose all their rights as ecclesiastics, and are suspended *ab officio et beneficio*, besides incurring all the penalties which laymen incur.

6. Lay persons who are excommunicated and declared *vitandi* are debarred from receiving the sacraments, from assisting at Mass or at any ecclesiastical functions, from receiving Christian burial, and from association with the faithful even in purely human matters.

7. Previous to 1869, when Pius IX. issued the famous Constitution *Apostolicæ Sedis*, and thereby remodelled the Church's

laws as to censures, there were two kinds of excommunication, *latae sententiae*, known to law, *i.e.* the major excommunication and the minor. But since that date the minor excommunication *latae sententiae*, which simply deprived a person of eligibility to office or benefice or the passive reception of the sacraments, has no longer any place in law. Hence the word 'excommunication' is now understood as referring solely to the greater sentence.

8. Excommunication is divided into :

(1) *Latae sententiae*.—The censure is incurred *ipso facto* by the perpetration of the crime without needing the condemnatory sentence of a judge. The fact of the crime being proved, there is only necessary a sentence declaratory. This censure is known if the law is formulated in this wise : 'We order under pain of excommunication' &c.

(2) *Sententiae ferendae*.—This censure is one which has *dē iure* the penalty attached, but requires also the sentence condemnatory. It is known by such a phrase in the law as, 'Let the transgressor be excommunicated.'

9. Another division is into :

(1) Excommunication *a iure*, e.g. by the Council of Trent or by the Constit. *Apostolicae Sedis*.

(2) Excommunication *ab homine* : on account of some fault by sentence of a judge.

10. The censure *latae sententiae* is also divided into :

(1) Excommunications reserved in a special manner to the Roman Pontiff.

(2) Excommunications simply reserved to the Roman Pontiff.

(3) Excommunications reserved to the bishop or ordinary.

(4) Excommunications reserved to no one.

11. Those who can issue sentences of excommunication are :

(1) The Pope for all the world and in every case.

(2) Bishops within their own dioceses.

(3) Cardinals in their churches.

(4) Legates in the place of their legation.

(5) Chapters *sede vacante*.

(6) Vicars general.

(7) Prelates having jurisdiction *in foro externo*.

(8) Abbats, priors, and other regular superiors in respect of their subjects.

(9) General and provincial councils.

(10) General chapters and congregations of orders.

12. The Council of Trent decrees :

‘Although the sword of excommunication be the very sinews of ecclesiastical discipline, and very salutary for keeping the people in their duty, yet it is to be used with sobriety and great circumspection, seeing that experience teaches that if it be wielded rashly and for slight causes, it is more despised than feared, and produces ruin rather than safety.’

Sess. xxv.  
c. 3, d.r.

13. Those who can be excommunicated must be :

- (1) Christians.
- (2) Gravely offending.
- (3) Contumacious.
- (4) Capable of reason.
- (5) Subject to the authority that excommunicates.

14. A chapter cannot be excommunicated collectively by the bishop ; nor can a community, university, or college.

15. If all the members of a collegiate body are contumacious in crime, each one, singly and determinately, can, after canonical monition, be excommunicated by the bishop.

16. The publication of a sentence of excommunication must be made :

- (1) Officially, *i.e.* by the judge.
- (2) Publicly, *i.e.* so that the community may know.
- (3) It may be either in writing or *vivi voce*.

17. The effect of such a publication is that the faithful are obliged to shun the company of the excommunicated person, who is thereby declared *vitandus*. If there be no formal publication the excommunicated person is called *toleratus*, and the faithful are not obliged to avoid intercourse ; but they may do so, especially if it be publicly known that he is excommunicated.

18. A priest who is *toleratus* cannot of his own accord associate with the faithful ; but he may administer the sacraments to them when he is asked by them to do so.

19. There are two opinions whether the faithful can ask for and receive the sacraments from one who is *toleratus*. The more probable opinion is that they can do so when there is a good cause.

20. Besides the general effects of excommunication, the person under the censure is absolutely incapable of being appointed to benefices or to any ecclesiastical office. It does not, however, *per se*, deprive him of those he already possesses ; it suspends him from them. Deprivation only comes if he remain under the censure for a year and do not meanwhile seek for release. As regards the benefice, some canonists, among them Schmalzgrueber, hold that



the sentence of the judge is necessary before the excommunicate loses his actual right to the fruits.

21. Another effect is that the excommunicate is excluded from certain judicial proceedings in the courts Christian (*q.v.*). This applies in all its rigour to the case of a *vitandus* not to a *toleratus* unless objection be raised at any time of the proceedings and the fact of excommunication be proved within eight days of the objection being raised. But an excommunicate can appear in court as a defendant, for he has the natural right of self-defence; he also can appear as plaintiff if he be seeking to establish the invalidity of the censure or his innocence.

22. An excommunicate loses, whether *vitandus* or *toleratus*, jurisdiction in the Church because he is suspended *ab officio* to which jurisdiction is annexed. One who is *vitandus* loses all valid jurisdiction, voluntary or contentious, except as regards absolution *in articulo mortis*.

23. Modern canonists hold that the law forbidding intercourse with a *vitandus* in social or worldly affairs is now, from the force of circumstances, obsolete; and that the obligation is imposed upon the faithful only so far as scandal or moral contagion may demand.

24. Absolution from excommunication *a iure* unreserved can be obtained from any confessor.

25. Absolution from excommunication *ab homine* and reserved to the Pope can, with exceptions, be obtained from regular confessors and others having special faculties.

26. Absolution from excommunication *ab homine*, by special sentence, can only be obtained from the judge who passed it, or from his delegate, his successor, or his superior. A metropolitan or a legate can only absolve in such cases by way of appeal.

27. Absolution from excommunication *ab homine* by a general sentence without any reservation can be obtained *in foro interno* from any approved confessor.

28. Absolution from excommunication can be given, not only in confession, but also outside of the sacred tribunal. It can be given to the absent and even to those unwilling. To the dead it is given indirectly.

29. Absolution can be given in various ways :

- (1) Absolutely.
- (2) Conditionally.
- (3) *Ad cautelam*.
- (4) With penalty of recidence under certain circumstances.

(5) As to certain effects only.

30. No one can be absolved in either *forum* unless he promises on oath to obey the commands of the Church and not to commit the fault again.

### EXECUTOR OF APOSTOLIC LETTERS

1. The executor of apostolic letters is the person charged with carrying them into effect.

2. There are two kinds of executors :

(1) *Merus*, i.e. one who is deputed after the business is fully discussed, and is concerned only with the actual execution without exercising any jurisdiction. He does not take cognisance of subreption ; but, knowing that this has taken place, he simply refrains from executing his charge.

(2) *Mixtus*, i.e. one who is also deputed to act as judge and examiner of the allegations made &c. by such phrases as the following : *Vocato Tūo, amoto, dummodo verificato iure patronatus, vocatis vocandis, dummodo non sit alteri ius quaesitum, &c.*

3. An executor *mixtus* of apostolic letters in contentious cases ought first to require justification of the letters ; otherwise he proceeds unjustly. He can act by showing the letters to the Episcopal Chancery. Ordinaries cannot impede the execution.

4. In matrimonial causes outside Rome the commission is always sent to ordinaries.

5. A vicar capitular cannot without special faculties execute letters issued *in forma dignum* to the diocesan bishop ; but the duty falls upon the nearest bishop.

6. The executor, whoever he may be, must observe, with exactness, the form prescribed in the letters which authorise him to act. Otherwise, by exceeding his commission, what he does will not only be unlawful, but also null and void.

7. In the execution he cannot accept any spontaneous offering on any plea whatsoever. The notary, however, can make the authorised charge for examining witnesses &c.

8. The executor of occult matrimonial dispensations in the internal *forum* should be a doctor in theology or in canon law, though sometimes the Sacred Penitentiary directs the execution to be committed to a discreet confessor approved of by the ordinary. The executor of these dispensations performs his office without witnesses or without giving any deed in writing ; and he is bound to destroy the document as soon as it has been executed.

9. An executor can sub-delegate his office unless he be ordered to proceed personally.

10. The executor does not need justification for apostolic letters *in forma gratiosa*, since he can presume that they have been justified in the *Dataria* before the issue. Hence in these he is only a mere executor.

### EXEMPTION

1. An exemption in general is a privilege which dispenses from the observance of the common law.

2. In particular, an exemption is the withdrawal of a church, college, or monastery, or even of an individual, from the jurisdiction of the bishop.

3. Exemption has to be proved against the possession of diocesan jurisdiction.

4. The general grounds for the proof are :

(1) Possession : *Possidentis melior est conditio*.

(2) Papal Bulls, granting the exemption.

(3) Episcopal concession, either granting or acknowledging the exemption.

5. Exemption ceases :

(1) By non-usage or by contrary acts.

(2) Abuse of privilege.

(3) Change of circumstances, times, and places.

(4) Grave inconveniences or loss.

(5) By consent of all parties concerned.

(6) By withdrawal by the supreme legislator.

6. Exemption of a cleric from the jurisdiction of his bishop is not granted by the Holy See except there be proof that cruelty is practised against him, or that there is a just fear of the same.

7. The Holy See always requires to hear what the bishop has to say, and, then, if necessary, enjoins him to proceed with due meekness.

8. If these fail, then an injunction is made forbidding the bishop to censure or to act to the detriment of the cleric without leave of the Holy See or of the metropolitan.

### EXORCISMS

1. Exorcisms are ceremonies used by the Church to expel the demon from the bodies of human beings or of other creatures, animate or inanimate.

2. Exorcisms require great prudence lest there be deception. They should only be undertaken in obedience to the judgment of the bishop.

3. The minor order of exorcists was employed in this office, especially for the exorcisms at baptisms; but now a special commission of the bishop is needed even for priests to perform the extra-sacramental exorcisms as regards human beings possessed by the devil.

4. For a lawful exorcism three things are necessary :

(1) A grave cause, *i.e.* not for asking curious questions, but for delivering a person possessed.

(2) That the adjuration should be made, not by entreaty, but by command.

(3) By one having the licence of the ordinary.

5. Among the accepted signs of possession are :

(1) Speaking in languages previously unknown by the sufferer.

(2) Horror excited by the sight of sacred things.

(3) Sudden swellings and equally sudden subsidings.

(4) Replies to mental questioning and obedience to mental orders &c.

## EXTERNAL FORUM

1. The external *forum* is the tribunal of a judge to whose jurisdiction a person is subjected in ecclesiastical matters that are outside of the tribunal of penance or the internal *forum*.

2. In the external *forum* is exercised the voluntary and the contentious jurisdiction of the Church; and judgments and penalties are there prescribed.

3. The judge can sit in the external *forum* only for those matters and persons who are subject to him either by ordinary or by delegated jurisdiction.

4. The privilege of the *forum* consists in clerics having their causes judged only by the ecclesiastical courts; but by concordats (*q.v.*) or by custom (*q.v.*), tacitly or expressly approved, clerics have practically lost this privilege.

5. Absolution in the internal *forum* does not include absolution in the external *forum*, and *vice versa*.

6. In absolution in the external *forum*, the *formula* observed in each diocese is to be observed. In absolution from censures there is no determinate form of words, but it must be expressed in some way; the mere will of the judge is not sufficient.

S.C.C.  
26 April,  
1749

## EXTRAVAGANTES

1. The name of *Extravagantes* is given to those decretals or papal constitutions which were published after the *Clementina*. Wandering out of the received *Corpus Iuris* they were gathered together and published as a supplementary collection.

2. There are two of these Extravagant collections :

(1) The *Extravagantes* of John XXII.

(2) The *Extravagantes communes*.

## EXTREME UNCTION

S.C.S.U. i.  
14 Sept.  
1842

1. In this sacrament the remote matter is olive oil blessed by a bishop ; and a priest in case of necessity cannot use oil blessed by himself. This ruling does not apply to Oriental Catholics.

2. The proximate matter is the anointing, in the form of a cross, the senses of seeing, hearing, smelling, feeling, speaking, or the parts nearest these. Also the feet and the loins of men unless there be a contrary custom.

S.C.R.  
9 May,  
1857

3. Without necessity a style is not to be used in making the anointings.

4. The subject of this sacrament is a Christian who is sick and capable of sin. Hence children before the use of reason and the insane, who have never had the use of reason, are incapable of receiving the sacrament. The subject should be in the probable danger of death by sickness.

Benedict  
XIV. *De  
Synodo*,  
viii. 7.  
*Instit.* 55,  
n. 7

5. The parish priest or his delegate is the ordinary minister of this sacrament. Hence other priests cannot give it except with his permission or, if he be absent, except in the greatest necessity.

6. Regulars can administer this sacrament to their own subjects and to their familiars ; and Pius IX., *Constit. Apostolicæ Sedis*, excommunicates *lata sententia*, reserved to the Pope, those who presume, without the leave of the *parochus*, to administer this sacrament to clerics or lay persons.

S.C.R.  
16 Decem-  
ber, 1826

7. The oil of the sick is to be kept in the church in a locked ambrey lined with violet silk, on the Gospel side of the high altar or of that on which the Blessed Sacrament is kept. Hence it is not lawful to keep it for convenience' sake in the priest's house, even in a decent and safe place, except in cases of a great distance from the church.

8. The First Provincial Council of Westminster thus decrees

concerning this sacrament : ' Greatly to be prized is the institution of this sacrament, by which in our last conflict with the enemy of our salvation, anointed for victory, we are strengthened.

(1) ' Wherefore the priest should be careful lest through any negligence of his or lack of pastoral vigilance any of the faithful under his charge depart this life without this healthful medicine of soul and body.

(2) ' He should, therefore, exhort the faithful not to put off receiving this most wholesome sacrament to the last moment of life, when already their senses have begun to fail them ; but that rather, immediately that the malady grows serious and they are in danger, let them call in the priests of the Church, who may anoint them with oil and so afford them strength and protection in their last agony.

(3) ' On this account the priest should carefully admonish the family of the sick man, and often also the faithful when in health, that if they are attended by a non-Catholic doctor they should insist and by frequent questionings urge him to warn them immediately there is danger, lest by some sudden attack their soul be deprived of the benefit of this sacrament.

(4) ' A suitable place, secured with a lock, should be had, if possible, in the church or in the sacristy, for keeping the oil of the sick ; or even in the house, in a decent and safe place, as directed in the Fourth Provincial Council of Milan. In building new churches an ambrey should be made near the high altar, bearing the inscription *Oleum infirmorum*, with a door secured by a lock.

(5) ' The priest, when called to a dying person who, owing to the violence of his disease or to some sudden accident, has already lost all his senses, so that he plainly can understand nothing, ought to administer this sacrament of extreme unction if the person be still alive, and while he had the use of reason showed signs of a pious mind whence one might judge that he would ask for this sacrament if he were now capable.'

9. The Maynooth Synod (1875) decrees :

xx. 1-5

' When this sacrament is administered let no offering be asked of the faithful.'

## FABRIC

1. The ' fabric ' is a term used to designate the deputies who are charged with the administration of the property of a church.

2. The right to administer ecclesiastical property belongs to

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the Church ; and she can delegate this right to others, clerics or laics, as accessory administrators who are responsible to her.

3. The administration of such goods has always been subject to circumstances. When in the fourth century the revenues of churches began in the West to be divided into three or four parts, it gradually became recognised that it was well to allow those for whose use one of these parts existed to look after their own interests. And as one of these parts was for the support of the fabric of the church and of divine worship, all those for whose use the church existed and by whose offerings it was kept up, had an interest therein. This, in one form or another, and in a way consonant with the genius of the people, the Church acknowledged, and she allowed those who bore the burthen also to have a share in the responsible rights. In England, for instance, before the schism, the use of churchwardens was universal. Chosen every year about Easter, one was elected by the people and the other by the parish priest. These two, with others also chosen and called sidesmen, were responsible to the bishop for the administration of the temporalities of the parish church. A similar system was found on the Continent in almost every place. The custom was Catholic and approved.

*Cf. Sess.  
xxii.  
c. 9, d. 7.*

4. The Council of Trent recognises it, and orders administrators of every church, both clerical and lay, to send in each year an account of their administration to the ordinary.

5. In almost all Catholic countries to-day the laity, under the direction of the bishop, are called to take their part in the administration of the goods of the parish church. The civil power has also made regulations for a matter so important for the welfare and peace of a parish.

6. In English-speaking countries the Catholic custom of having churchwardens or a body called the 'fabric' has not been restored. But in the United States the principle of having lay trustees with the consent of the bishops has been recognised by the Plenary Councils.

*Collec-  
tanea,  
n. 1628*

7. The S.C.P.F. 21 July, 1856, approved certain statutes for the councils for administering the temporal goods of the Church in Holland. These councils are composed of a number of the parishioners nominated by the bishop. In a vacancy, the council presents two persons to the bishop, who elects one to fill the post. The members hold office for four years, and can be reappointed. The bishop has the power to dismiss any member, and, if necessary, to dissolve the council for grave reasons after due inquiry and

hearing both sides. The parish priest is the head of the council. The powers of administration are defined, and the spiritual rights of the parish priest are safeguarded.

## FACULTY

1. A 'faculty,' in a legal sense, signifies a certain power, founded either on one's own right or on another's, of validly or lawfully doing some action. In a more restricted sense, it means the power which an ecclesiastical superior, having jurisdiction *in foro externo*, grants personally to one who is in some way his subject, to do something in the internal or in the external forum validly or lawfully, or, at least, safely.

2. By reason of their object faculties are divided into :

(1) Jurisdictional, *i.e.* giving jurisdiction for absolving from sins and censures, for dispensing in ecclesiastical laws, in vows, irregularities, impediments, &c.

(2) Licensing, *i.e.* giving leave to do something otherwise forbidden.

(3) Precautionary, *i.e.* giving authority in doubtful cases for safety's sake.

3. By reason of the grantor faculties are :

(1) Apostolic, if granted directly or indirectly by the Pope.

(2) Episcopal, if granted by the ordinary jurisdiction of the bishop.

(3) Regular, if granted by a regular prelate to his own subjects.

4. By reason of the mode or extension, faculties are :

(1) General : that is, granted for indeterminate persons even if limited by time.

(2) Particular : that is, granted in favour of determinate persons or particular cases.

5. Concerning the use of faculties the following rules should be observed :

(1) Faculties can only be used in favour of those members of the Church who are free from censure.

(2) Apostolic faculties granted to a bishop, which imply an act of jurisdiction in using them, can be communicated and applied only to the subjects of the bishop and to such determinate persons as are capable of receiving the favour granted by means of this faculty.

(3) Faculties *ex se*, which are founded in ordinary jurisdiction or in the formulas of the *Propaganda* faculties (*q.v.*), can be exercised



by the bishop when he or the subject is outside the diocese, unless, as regards the subject, it be expressed to the contrary in the indult.

(4) The bishop, or his delegate, using faculties for dispensing in virtue of the above formulas, or by quasi-ordinary jurisdiction, requires, for the validity and lawfulness of the act, a just cause existing at the time of the dispensation.

(5) It is necessary for validity that the concession of the grace (*q.v.*) be made known to the person in whose favour it is granted.

(6) The obligation of using the faculties, especially in dispensations, is a practical one, according to the greater or less urgency of the case.

6. As faculties depend upon the will of the grantor, the terms must be carefully studied, and where anything is obscure a right interpretation must be sought.

7. The general interpretation of faculties comes under the rules governing the interpretation of law (*q.v.*); but particular rules are as follows :

(1) Faculties are to be interpreted *comprehensive*, not *extensive*, except where there be a unanimous opinion of canonists in favour of such an interpretation.

(2) Their use is also to be interpreted according to the existing practice and the *Stylus Romanæ Curiae* (*q.v.*).

8. Faculties *in se* expire in the following ways :

(1) By the death of the grantor or his removal from office. The usual distinctions, however, must be made. See DISPENSATION.

(2) By the death of the privileged person.

(3) By lapse of time.

(4) By completion of the specified number of cases.

(5) By revocation.

(6) By renunciation.

(7) By completion of the business.

(8) By cessation of the formal cause.

## FALSE DECRETALS

1. The false decretals are a spurious collection of decretals attributed to the Popes and councils of the first three centuries. The collection is not Roman in its origin, but first appeared in the districts of Mayence, Metz, and Treves at some period in the ninth century. The date is assigned from 845 to 853.

2. The author calls himself in some manuscripts *Isidorus Mercator*, in others *Isidorus Peccator*, whilst in others the name

appears as *Isidorus Mercatus*. Who he was is not certain. Some identify him with Ebbon of Rheims, who was deposed in the Council of Thionville; others hold that the collection was made by the deacon Benedict of Mayence.

3. The actual date of the collection may be assigned to a period between 845 and 853; for the Council of Meaux in 845 does not know them, and the Council of Soissons in 853 refers to them. The author, whoever he was, quotes from a work of Hrabanus Maurus against the *chorepiscopi*, which was published between 845 and 850.

4. The object of the collection seems to be to protect the episcopate from the tyranny of metropolitans. It is an appeal to primitive use, and its substantial claims for the Papacy in this regard can be supported by documents of undoubted authenticity.

5. Cardinal Cavagnis says that although, from a critical point of view, the documents in the first part are apocryphal, they are, generally speaking, true from a legal standpoint. The very fact that the collection was generally received is a proof that it did not innovate upon the existing discipline. For instance, the right of the Popes to receive appeals was not only exercised before the appearance of the collection, but was openly acknowledged in the fourth century at the Council of Sardica.

Cf. *Institutiones Iuris Publici*, ii. p. 198

6. The collection was universally received; and it was not until the fifteenth century that doubts began to be cast upon the authenticity. Two Roman cardinals, Nicholas of Cusa (1464) and John of Turrecremata (1468), were the first to attack the collection as spurious; and the Ballerini brothers have established the non-authenticity. All now hold that many of the decretals are supposititious, and the form in which they appear is false.

7. One point is abundantly clear: the collection was not originated by the Popes, but by a Gallican cleric who saw, in the acknowledged rights of the See of Peter, the safeguard against the evils that were injuring the Church in his own country. If the Popes made use of the collection they did so for two reasons:

(1) The collection was generally received, and no hint was made that it was not what it claimed to be.

(2) It simply asserted what for centuries had been the acknowledged right and constant practice of the Holy See.

It is no argument against the truth of rights to allow that origins for these rights were, in troublesome times, assigned, by an unknown writer, carelessly or uncritically to sources which more perfect knowledge shows to be false.

## FALSITY

1. Falsity is a change from truth made maliciously and to the prejudice of another person.

2. Hence for the crime of falsity three things are needed :

- (1) There must be a change or perversion of truth.
- (2) It must be made with malicious fraud.
- (3) Some notable loss must befall another, or might so befall another, although by chance the evil was warded off.

3. Falsity can be committed in these ways :

- (1) *Dicto* :
  - (a) By a false witness.
  - (b) By an untruthful witness who does not remember or answers obscurely.
  - (c) By suborning witnesses.
  - (d) By unrighteous judges.
  - (e) By unfaithful advocates.
- (2) *Scripto* :
  - (a) By writing a false will or instrument (*q.v.*), or by signing one.
  - (b) By making oneself a legatee.
  - (c) By making a false copy.
  - (d) By forging a receipt.
  - (e) By changing dates.
- (3) *Facto* :
  - (a) By corrupting, burning, destroying, abrading, blotting a document for the purpose of hiding truth.
  - (b) By using false weights and measures.
  - (c) By supposititious birth.
  - (d) By preventing anyone from bearing witness.
  - (e) By compelling anyone to bear witness against another.
  - (f) By falsifying seals.

4. By the falsification of apostolic letters is incurred excommunication *latae sententiae* specially reserved to the Roman Pontiff by the Constit. *Apostolicae Sedis*, 1869, § IX. The censure extends to all falsifiers *dolo malo*, and to those who knowingly publish or sign such documents. The apostolic letters concerned are those, even if in the form of a breve and relating to either grace or justice, which are signed either by the Pope or the vice-chancellor of the Holy Roman Church, or their substitutes, or by command of the Pope.

Hence the censure is not incurred by forging the signature of any other, or by forging non-authentic and valueless documents.

5. A cleric falsifying letters of the bishop or chapter is to be suspended *ab officio et beneficio*; and regulars guilty of the crime of falsification are liable to the pains and penalties prescribed in their rules and constitutions.

## FAME

1. Fame, which is the same as opinion or repute, is of two kinds :

(1) *Fama hominis*.

(2) *Fama inter homines*.

2. Fame is judged by a public or by a common persuasion, whether it rest upon insinuation, suspicion, or proclamation.

3. It is necessary to distinguish fame from rumour :

(1) *Fama* is what all the city, or the neighbourhood, or the greater part of the people assert. It comes from a certain author.

(2) *Rumor* is what only a part—say one-half or one-third—of a community assert. It comes from an uncertain author.

4. Good fame, which is an increase of virtue, is the state of undiminished dignity proved by laws and morals.

5. Bad fame is the privation or diminution of fame.

6. To prove fame in a case, whether good or bad, there is required :

(1) That it be traceable to grave persons, certain authors, reasonable and probable causes.

(2) That witnesses should depose to the fact at a precise time before the case.

(3) That it should be uniform, constant, perpetual, and unchallenged.

(4) That it be proved by two witnesses who are worthy of belief and beyond all exception.

7. Since fame consists in public opinion, bad fame ceases by a change to a better life and penance done for sins; for then bad fame is changed into good fame. Hence one who has given proof of reformation is eligible to posts of which hitherto, being of bad fame, he was incapable. Santi, i.,  
p 60

8. But if the bad fame come from the judicial sentence of a public authority, before legal good fame be restored, a contrary sentence is required to declare innocence or not proven. Hence

until this be done, or until dispensation *ab infamia* be granted, the road to dignities is closed.

### FAMILIAR

1. A 'familiar' is one who is under the power of his master, and is kept at his expense. He is therefore a commensal.

2. There are required two things to make a familiar :

(1) *Mens*, which is shown by the service given to the master.

(2) *Dens*, which is proved by having money, board, and lodging provided by the master.

3. Familiars of cardinals serving him *in actu* are exempt from the jurisdiction of the ordinary.

*Cf. Trent,*  
*Sess.*  
*xxiii.*  
*c. 9, d. r.*

4. A bishop can, with letters testimonial from the bishop of origin or domicile, ordain his familiar who is not his subject but has dwelt in his house for three continuous years. The bishop is obliged at once (within a month), without fraud of any kind, to confer upon him a sufficient benefice.

### FATALIA

1. *Fatalia* are the times within which an appeal must be made to prevent the execution of a sentence.

2. The *fatalia* are four in number :

(1) The time of the interjection of the appeal (*q.v.*), viz. ten days from the pronouncing of the sentence if the accused were present, or if he were absent from the time when he became aware of the sentence.

(2) The time of asking of apostils (*q.v.*). The law grants thirty days, but canonists are not agreed whether this period dates from the sentence or from the interjection of the appeal.

(3) The time of the introduction of the appeal, *i.e.* the presentation to the higher court and the demand that the appeal be received and the adversary be cited. If the appeal be *in devolutivo*, the higher judge orders by *litteris compulsorialibus* the former judge to send in all the *acta* ; if it be *in suspensivo*, letters inhibitory are issued to the lower judge not to proceed. Unless a term has been fixed for the appeal, these *fatalia* extend, according to Bouix, over six months.

3. The time of the appeal to its end is allowed to be one year, or two years if there be good reason. But if during this time

the appellant do not pursue his appeal he is considered to have abandoned it.

4. It must be noted that the judge *a quo* can lessen the time for the introduction of the appeal and also for ending it; but the judge *ad quem* has not the same right unless the delay, in a given case, be prejudicial to the common good.

## FEAR

1. 'Fear' is a confusion of the mind caused by instant or future danger.

2. Fear is of two kinds :

(1) Grave, such as may befall a steadfast man.

(2) Light, such as influences an unsteadfast person.

3. For grave fear all these four conditions are required :

(1) The evil feared must be grave *in se* and not only in the opinion of the one fearing.

(2) It must be based on a reasonable foundation, and not lightly or imprudently.

(3) That the one who inspires the fear has the power to fulfil the threats.

(4) That the one fearing cannot, in any way, resist the threatener nor avoid the evil feared.

4. Fear comes from two causes :

(1) Intrinsic—that is, from oneself or from a natural cause.

(2) Extrinsic—that is, from another person.

5. Fear is also :

(1) Just, as coming from a just cause.

(2) Unjust, as coming from an unjust cause.

6. As fear takes away or lessens liberty, so contracts made under fear may be judged to be invalid.

7. Fear that is grave, extrinsic, and unjust nullifies a marriage contract, but not if it be only intrinsic. The *onus probandi* lies on the person who claims to have acted under fear.

8. Reverential fear—that is, the fear of resisting one to whom the person is subject—will invalidate marriage if it be also extrinsic, *e.g.* accompanied by blows, threats, hatred, importunate entreaties.

9. Such fear, also, that is grave, extrinsic, unjust, or reverential invalidates the vows of religious profession and all other vows made under its influence.

## FEES

1. A fee or *honorarium* is a retribution for services rendered.

2. It is expressly and seriously forbidden for clerics to demand anything in payment for the administration of the sacraments or for funerals.

3. The Council of Trent forbids anything to be received, under any pretext, for conferring orders or for granting letters dimissorial.

4. As those who serve the altar have to live by the altar, and the labourer is worthy of his hire, the Church has commanded the faithful to contribute to the support of their pastors; and one of the ways, authorised and regulated by the Church, is the custom of making offerings on the occasion of receiving certain sacraments. Hence the clergy can receive these offerings; and, in rigour of the law, they can even demand the amount which the diocesan law prescribes. But the questions of necessity and of scandal must be reconciled with that of right.

5. It is within the competence of the diocesan authority to prescribe the minimum amount to be offered on such occasions. While the clergy cannot demand more, they can always exercise their discretion in particular cases to accept less or nothing at all.

6. The Second Council of Westminster decreed:

(1) 'Retributions for Masses are the peculiar of the priest.

(2) 'But the priest should be on his guard lest he fall into the suspicion of receiving anything on account of administering the sacrament of Penance.

(3) 'Although the Church detests all filthy lucre in extorting or exacting money from the faithful for the celebration of the sacraments, yet the Council of Lateran, held under Innocent III. (1215), prescribes that the laudable customs, in accordance with which offerings were made by the faithful to the ministers of the altar on occasion of the administration of the sacraments, should be observed.

viii. 14-16

(4) 'Whilst, therefore, we forbid anything to be asked for (and much more anything to be exacted) before the celebration of baptism and matrimony, or even before the celebration as *de iure*, we leave it to the prudence of bishops to determine in their diocesan synods what seems best adapted to the customs and state of places. Especially should they most vigilantly correct all abuses, if any

exist, as to the amount as well as to the exaction of these offerings, by enforcing everywhere an equitable arrangement.

(5) 'Priests should beware of receiving any retribution from penitents on account of confession.' I. West.  
xix. 7

7. The Maynooth Synod (1875) decreed :

(1) 'The sacraments should never be withheld on the plea that the usual offerings are not forthcoming.' n. 30

(2) 'Lest through individual avarice any abuse may creep in, and this sacrament [of Baptism], altogether necessary to salvation, should be withheld from anyone, no parish priest or his curate should enter into pacts concerning the aforesaid offerings before administering baptism. We likewise forbid them, and under pain of suspension *latae sententiae*, to refuse baptism to any infant on the plea of the defect or subtraction of the aforesaid offerings.' n. 41

8. As regards the fees or taxes to be paid for dispensations &c. issued from the episcopal chancery, *see under TAXA INNOCENTIANA*.

## FISCAL PROCURATOR

1. The fiscal procurator is an official attached to a bishop's court as promoter or prosecutor of causes affecting the public good or interest of the Church. He acts as either plaintiff or defendant in all judicial proceedings.

2. His appointment rests with the bishop or the judge of the episcopal court.

3. He must take an oath of fidelity when entering on his office, and is removable *ad nutum*.

4. The appointment of a fiscal procurator is of obligation in every diocese. If necessary he can have an assistant, who is called the fiscal advocate, and can be selected, with the leave of the bishop, by the fiscal procurator either at discretion or from those approved of for the office. S.C.E.R.  
11 June,  
1880

5. In the commission of investigation his status is of plaintiff or of defendant for the diocese ; and he has no more rights in the case than the one to whom he is opposed.

## FOUNDATIONS

1. A foundation is the *affectatio boni alicuius* to an ecclesiastical institute made on the condition of some work being done, either perpetually or for a long time.



2. Foundations have to be approved of by the prelates to whom they are made, and hence by the bishops in respect of all institutions which are under their jurisdiction.

3. Urban VIII. approved of a decree S.C.C. that the consent of the bishop is necessary for the foundation of perpetual masses.

4. Before the prelate gives his consent to a foundation he must consider whether the endowment be sufficient for the charge.

5. The founder can, when founding, make any conditions that please him, even if they be contrary to the common law ; provided that they be not impossible or forbidden in any way and are admitted by the prelate.

*Cf. Trent,  
Sess. xxv.  
c. 5, d. 7.*

6. The founder, or his heirs, and the bishop cannot change the terms of a foundation once canonically erected, especially if the change would be to the detriment of a third person.

7. The care and execution of pious foundations is one of the gravest duties of a bishop. He is responsible to the law for his administration.

*Urban  
VIII. Con-  
stit. Cum  
saepè, 21  
Jan. 1625*

8. When the foundation no longer meets its charges of masses, the bishop has to apply to the Holy See for reducing the obligation.

9. As regards the reduction of other pious works, while some doctors say that the bishop, when there be a just cause, can commute the pious dispositions of testators, St. Liguori denies it, and holds the contrary to be the more probable opinion.

10. The First Westminster Council decreed :

xiv. 4

(1) 'It is fitting that the bishop select from the body of the chapter or from the clergy prudent men to help him in the temporal administration of the diocese. He should often use their advice, &c.

xxiv. 5

(2) 'New obligations should not be accepted without the sanction of the bishop. If those which he has already to fulfil appear too burthensome, or there does not exist a congruous endowment, let him [the priest] apply to the bishop or lay the matter before him at visitation.

*Ibid.* 6

(3) 'If any of the faithful wish to found an anniversary or daily mass, the matter must be treated with the bishop, and the sum contributed for this object must be profitably invested so as to produce an annual interest for a perpetual endowment, as far as circumstances of time and place will allow, the canonical sanctions being observed.'

11. In the list of questions to be answered by the bishop on his visit *ad limina*, the S.C.P.F. ask these :

(1) 'Are there any pious foundations in the diocese or legacies bequeathed for pious purposes ?' No. 49

(2) 'Are the proceeds of such bequests properly administered and the canons relating to such matters attended to ?' No. 50

## FOUNTS OF CANON LAW

1. The founts of canon law are all instruments (*q.v.*) that contain the canon law.

2. The founts are :

(1) Holy Scripture. The moral code of the Old Testament is still in force, but the ceremonial and judicial laws have lapsed directly, though indirectly they are of weight in canon law. The New Testament is the chief source of all ecclesiastical law ; for in it we find Christ as the great Lawgiver, the Church as His kingdom, and Peter as the keeper of the keys, the confirmer of his brethren, the shepherd of the whole flock, the judge of disputes, and the head of the Apostles.

(2) Divine tradition. That is, a tradition which has God for its Author, and was received by the Apostles either directly from Christ or by the suggestion of the Holy Ghost. These traditions are binding on all the faithful, and, in a broad sense, are a source of the common law. Human traditions, whether coming from the Apostles or from the Church, are, as a rule, a source only of particular law.

(3) Laws made by the Apostles.<sup>1</sup> Of these, the precepts promulgated by the Apostles as divinely inspired always remain in force ; but those made by them as the rectors of churches can be changed by the Pope. Soglia,  
p. 29

(4) The teaching of the Fathers. These are either doctrinal or magisterial, and their authenticity must, as well as their intention, be established.

(5) The decrees of the Pope (*q.v.*).—As he has received directly from Christ legislative power over the whole Church, the Pope may practically be taken as the sole ecclesiastical fount of law. He is the lawgiver of the Church, and all enactments require

<sup>1</sup> This would seem to include for certain only what is to be found in the inspired writings ; for the Apostles' Creed is, as far as its origin can be traced, only the baptismal creed of the local Roman Church, and the story of its composition by the Twelve does not bear investigation. The institution of Lent, the obligation of hearing mass on Sundays, the Canons of the Apostles, the Constitutions of the Apostles, &c., in the strict sense, are not apostolic laws.

his confirmation before they have the force of law. Hence under the head of the Pope may come the three other sources recognised by canonists, viz. General Councils (*q.v.*), which cannot exist apart from the Pope ; the Roman Congregations (*q.v.*), which have jurisdiction from him ; and Custom (*q.v.*), which requires his consent, expressed or tacit, before it can have the force of law.

### FRUIT OF BENEFICE

1. The fruit of a benefice (*q.v.*) is the certain emolument or income received in right of a benefice.

2. Hence distributions (*q.v.*), anniversaries, and other casual offerings are not part of a benefice, and are not subject to the special laws of restitution, though they are part of the income of the beneficed person.

3. If the collation (*q.v.*) be null and void, although the benefice were received *bona fide*, the fruit of the benefice, unless already consumed, must be restored.

4. During the vacancy of a benefice the fruit belongs to the Church, and after paying what is necessary for the support of religion, the balance is to be kept for the successor, unless there be a lawful custom to the contrary.

5. In the case of resignation (*q.v.*) the fruit belongs to the resigner only up to the moment of the acceptance of the resignation. It does not depend upon his knowledge that the resignation has been accepted.

6. In the case of translation (*q.v.*) the bishop has only the right to the fruit of one diocese until the moment when, by pontifical act, he is translated to another diocese. Unless he be translated against his will he is bound to restitution of all that he has used from the moment of his actual translation, not from his hearing of the act.

7. A cleric promoted to the episcopate can enjoy the fruit of his former benefice until his consecration or until three months have elapsed since assenting to the confirmation of his election.

8. In other cases of clerics transferred, the fruit of one benefice can be enjoyed until the moment of possession of the other is completed.

Ferraris,  
*Fructus*,  
11, 12

## FUNERAL DUES

1. Funeral dues are canonical perquisites of a parish priest receivable on the funeral of any of his parishioners.

2. He cannot require any from the poor.

*Cf. Ritu-  
ale Ro-  
manum*

3. As regards others, unless there be a contrary custom, he can only demand the dues if there be an extraordinary function.

4. 'Let parish priests be content with the alms given by approved custom or which the ordinary has fixed. Hence they have a right to demand the dues approved by custom or fixed by diocesan law. *Ibid.*

5. If the funeral of a parishioner take place in another part, the parish priest of the deceased has a right to a fourth of the approved dues. This fourth has to be paid by the church in which the funeral takes place; and it includes that proportion of all the emoluments that came to the church by reason of the funeral up to the thirtieth day after the interment.

6. In the case of the funeral of a canon the *quarta funeralis* is due, not to the parish priest of the cathedral, but to the parish priest of the late canon's domicile.

## GENERAL COUNCILS

1. A general council is one which is convoked by the authority of the Pope, or at least with his consent, and is presided over by himself in person or by his legate.

2. Its members are as follows:

(1) *Iure divino*, i.e. all bishops in union with the Holy See even if they be not yet consecrated. These by their office have a decisive vote. They are not simple papal vicars or councillors, but are real judges and pass a definitive sentence.

(2) *Iure ecclesiastico*, i.e. cardinals who are not bishops, abbats *nullius*, and superior generals of orders. These have also a decisive vote, not *ex officio*, but *ex privilegio*.

(3) Procurators of lawfully absent bishops. These by common law have no decisive vote. At the Council of Trent they had a consultative vote; but at the Vatican Council they had no vote at all, and could only be present at the public sessions.

3. The method of procedure is as follows:

(1) Only the Pope can determine the matter to be discussed

and the manner in which the Council is to be held ; for in a council he loses nothing of his divine right as ordinary of the Catholic Church with the supremacy of jurisdiction. He alone has the power of ending the debates, of suspending or of dissolving the council.

(2) The bishops have no right of initiative, and they can only proceed indirectly and by way of postulation.

(3) Congregations prepare the work for the private sessions, and the results are published in the public sessions.

4. It is necessary that there should be :

(1) Freedom of discussion and liberty of judgment.

(2) No fraud or violence must be practised on the fathers.

(3) A sufficient examination of the question discussed.

(4) A majority of votes resulting therefrom.

5. Once a council has defined a question no doubt can any longer be entertained as to the care and deliberation used.

6. The decrees of a general council require the approbation and confirmation of the Roman Pontiff before they have any effect. This may take place in three ways :

(1) When the Pope is present in person, and, together with the bishops, judges and defines.

(2) When by a solemn act he expressly confirms the decrees.

(3) When he accepts them, praises them, and orders them to be observed.

7. The authority of general councils approved of by the Pope is that of universal law. In matters of faith and morals, the definitions are infallible ; and the disciplinary laws are *per se* binding upon the whole Church, and need no other promulgation.

## GOD-PARENTS

1. God-parents are, as it were, spiritual parents who receive into charge from the font the newly baptized person. They have the duty of teaching him the faith, the Lord's Prayer, and the Creed ; and this they have to do by themselves if others fail.

2. The Council of Trent orders that one at least, either man or woman, shall be used, and at most only one man and one woman.

3. The appointment of the god-parents rests with the parents of the person baptized ; and if they neglect to provide one the parish priest or the bishop must supply the defect.

4. The Council directs the priest to inquire before baptism as to the persons proposed to act as god-parents ; and having admitted

Sess.  
xxiv. c. 2,  
*d. r. Matr.*

them he must enter their names in a book and instruct them as to the spiritual relationship they contract with the baptized person and his parents.

5. The following qualifications are necessary for the office of god-parents :

(1) Years of discretion.

(2) Baptism.

(3) A formal intention of fulfilling the office.

(4) A real touching, either *per se* or *per procuratorem*, in the actual baptism of the one to be baptized.

6. The following persons are prohibited by law from acting as god-parents :

(1) The dumb.

(2) Regulars of both sexes, except a regular bishop. The S.C.R. (15 February, 1887) allows in case of necessity Sisters of Charity to act as god-mothers for solemn baptism of women. This is also allowed in missionary countries to all religious women under simple vows.

(3) Heretics, apostates, schismatics, and infidels.

(4) Notorious freemasons.

(5) Public sinners and those who are infamous.

7. Parents are to be excluded from the office of god-parents to their own children. But in places in which there are none who can act as god-parents they may exercise the office of receiving the child from the font without contracting the impediment of spiritual relationship.

8. Catholics cannot act as god-parents to heretics, apostates, schismatics, or infidels.

Holy  
Office,  
9 Dec.  
1745 ;  
5 July.  
1878 ;  
15 Sept.  
1869

9. The office of god-parents may be undertaken by proxy on the following conditions :

(1) The absent person must be eligible for the office.

(2) He must depute the proxy to act for him.

10. The First Westminster Council decreed :

'Persons who are not Catholics must not be admitted as god-fathers or god-mothers, nor those excluded by law, namely, persons under the age of puberty, excommunicated by the greater excommunication, who have not been confirmed, who do not fulfil the precept of paschal communion, and ecclesiastics. On account of danger to the faith of infants which may easily occur after the death of parents, let the priest take care that, as often as may be possible, two sponsors be used.'

*Ibid.* 14  
Oct. 1656

xvi. 5

A A

## GRACE

1. A grace is a favour, such as a dispensation (*q.v.*), a provision to a benefice (*q.v.*), rehabilitation, and all other matters which the Pope grants of his own free will, not *de iustitia*.

2. A grace which the Pope has conferred is not recalled at his death; for *gratia facta* is a *ius acquisitum*. On the other hand, *gratia facienda* implies no *ius*, and therefore may be recalled.

3. If the *gratia* be granted *ad beneplacitum* of the Pope it lasts until revocation or until his death. But if it be granted *ad beneplacitum S. Sedis* it expires only with revocation.

4. Conditional graces, said to be so by the tacit condition *si preces veritate nitantur*, or with the clauses *si ita est, dummodo, &c.*, expire with the Pope unless they have become absolute.

5. Conditional graces are regulated by their conditions: *e.g.* if a grace be conceded to anyone except in a certain case, or with a certain limitation, should that case arise, or the limit be exceeded, the grace ceases.

6. A grace made without prejudice to a third person is null if that prejudice arise.

7. A grace *in forma dignum* is not conditional; for the clause *quatenus idoneus reperiat* is monitory only, and refers to the execution.

## GRATIANA

1. The *Collectio Gratiana* or the *Decretum Gratiani* is one of the early collections of decretals. It is the work of a Benedictine monk, Gratian of Chiusi in Tuscany. He took the habit in the monastery of SS. Felix and Nabor at Bologna, and brought out his celebrated compilation in 1151.

2. His collection is made up from Scripture, from fifty of the Apostolic canons (*q.v.*), from councils, papal constitutions, opinions of the Fathers and other ecclesiastical writers, from the Roman civil law, from the capitulars of the Frankish kings, from ecclesiastical history, from the *Liber Diurnus* and the *Ordo Poenitentialis*, and the Roman Pontifical.

3. It is divided into three parts:

(1) The first contains 101 distinctions distributed into canons or *capita*. The first twenty refer to the general principles of law;

the remaining eighty-one treat of persons, their rights, obligations, &c.

(2) The second part consists of thirty-six causes or judgments divided into questions which are subdivided into canons or *capita*. The third question of Cause 33 treats of penance, and is subdivided into seven distinctions.

(3) The third part, under the title of 'Consecration,' is divided into five distinctions, and treats of sacred things such as churches, sacraments, &c.

4. More than one hundred canons are called *Palea*, a term which was first added in marginal notes. The precise meaning of the term is disputed.

5. The *Gratiana* was a private collection, although most extensively used. The documents it contains are often faulty and spurious. The collection was several times corrected.

6. For the method of quoting see article CORPUS IURIS CANONICI, n. 3.

### GREGORIANA

1. The *Gregoriana* is a collection of decretals and canons issued by Gregory IX. in 1233. The actual work of codification was entrusted to St. Raymund of Pennafort, who in three years gathered together and classified not only the decretals from Gregory I. to Gregory IX., but also passages from Scripture, the canons of the Apostles, the decrees of councils from Antioch to the Fourth Lateran, together with opinions of Fathers and other ecclesiastical writers. When completed the Pope made it his own, and directed it to the Universities of Bologna and Paris.

2. The work is distributed into five books, viz. :

(1) Of ecclesiastical judges or of prelates.

(2) Of civil judges.

(3) Of ecclesiastical affairs which in civil matters belong to the episcopal *forum*.

(4) Of matrimonial affairs.

(5) Of criminal affairs, judgments, faults, and censures.

The contents are described in the following verse :

*Iudex, Iudicium, Clerus, Connubia, Crimen.*

3. The titles of the decretals are authentic, and can be quoted as *regulae iuris* ; but they must not be confounded with the summaries.

4. The *partes decisae*, which are frequently mentioned, are parts

A A 2



of the decretals which St. Raymund suppressed, and which private authors have inserted for elucidating certain obscurities.

5. The *Gregoriana* is generally cited this way :

*Cap. Quotiens de Pactis.*

That is the chapter *Quotiens* of the title *de Pactis* which the index tells us is the thirty-fifth title of the first book.

## GREGORIAN CHANT

See PLAIN SONG

## HABIT

1. The habit does not make a monk ; but he becomes such by regular profession which is made after the canonical novitiate (*q.v.*).

2. A religious who rashly casts off his habit, *i.e.* with the mind of leaving his order or without a reasonable cause, is *ipso facto* excommunicated.

3. Religious are always bound to wear the habit of their order according to their constitutions. This rule applies also to cardinals and bishops belonging to religious orders.

4. All beneficed clerics are bound to wear the ecclesiastical habit.

5. The Westminster Councils decree :

(1) 'The dress of ecclesiastics ought to distinguish them from laymen, but not confound them with heterodox ministers. It should be black or of a dark shade ; and they should not, under pretext of travelling, return to the ignominy of the secular habit from which they have been freed. As to the shape we recommend that which recently has been begun to be used by the secular clergy. At home their most becoming dress is the cassock (or, if they prefer it, what is called the *zimarra*) with the biretta.

I. xxiv, 5

(2) 'We order that every priest shall wear the Roman collar, not merely whilst he is fulfilling his sacred duty, but at all times in order that he may be recognised by all as a priest. We desire likewise that the custom in vogue among ecclesiastics in Rome of not wearing whiskers or beard should be strictly followed.

IV. xi.  
13, 14

(3) 'And if any priest so completely lays aside the clerical habit, unless in some very rare case approved of by the ordinary, that he can no longer be recognised by everybody as belonging to the clergy of this province, and is an object of suspicion to the

faithful or of notable scandal, he should not be allowed to say mass nor assist in the sanctuary at the divine offices.'

### HEBDOMADARIUS

1. The 'hebdomadarius' is the canon whose duty it is to celebrate the divine offices for the week.

2. Even if not *paratus* he takes the first place over all the canons and dignitaries if he be himself a canon or a dignitary.

### HERESY

1. Heresy can be considered in two ways :

(1) *In se* : that is, as an assertion contradictory of any truth proposed by the Church as revealed by God, and therefore to be held with firm faith by all.

(2) *In individuo* : that is, as a voluntary and pertinacious error against the truth of the Catholic faith in one who professes the Christian religion.

2. Heresy is divided into :

(1) **Material**, which is an erroneous consent concerning faith, but arising only from ignorance or mistake and without pertinacity.

(2) **Formal**, which is a voluntary and pertinacious error of a baptized man who professes the Christian religion. Hence two things are required for formal heresy, viz. :

(a) Error in the intellect concerning some article of faith.

(b) Pertinacity in the will.

3. Formal heresy is :

(1) **Internal**, which can be absolved by any approved confessor.

(2) **External**, either occult or public, which belongs to the episcopal tribunal.

Trent,  
Sess. xxiv.  
c. 6

4. Hence it will be seen that heresy differs from schism (*q.v.*), which is opposed to unity whence comes charity; therefore it is an error of the will, not of the intellect, as is the case with heresy. Theoretically schism can be without heresy, which, however, always implies schism.

5. Cases of heresy regard only the ecclesiastical judge, that is :

(1) The Pope or the Holy Office.

(2) The diocesan bishop who, as the delegate of the Holy See, has jurisdiction in this matter even over exempt regulars.

(3) The chapter *sede vacante*, but not for exempt regulars.

## HERETICS

1. A heretic is one who denies a defined and sufficiently proposed article of the faith with error of intellect and pertinacity of will.

2. Pius IX., *Constit. Apostolicæ Sedis*, 1869, decreed excommunication *latae sententiæ*, specially reserved to the Roman Pontiff, against all and every heretic called by whatever name; and also against their believers, receivers, favourers, and defenders. He also declares the same censure against those who, without the leave of the Holy See, read those books which defend heresy.

3. Leo XIII., *Constit. Officiorum ac Munerum*, 1896, likewise forbids reading books by heretics who defend their heresy.

4. All unnecessary communication whence may be feared danger of subversion is forbidden. But Martin V., *Constit. Ad evitanda*, declared that an excommunicated person is not *vitandus* unless he be specially and by name declared so by the judge.

5. Marriage with heretics is valid, but is unlawful without dispensation, which is only given for the following reasons:

- (1) Spiritual utility.
- (2) Moral necessity.
- (3) Avoidance of a grave loss.

And under the following conditions:

- (1) The free profession of religion to the Catholic party.
- (2) The Catholic religious rite alone may be used in the solemnization.

(3) All the issue must receive a Catholic education.

6. Public disputes with heretics on matters *de fide* is forbidden under excommunication *sententiæ ferendæ*.

7. Heretics are irregular, and so are their children. Hence a dispensation is necessary in case of orders.

8. Heretics are of bad fame at law.

## HIERARCHY

1. A hierarchy is a sacred principality and can be considered:

(1) *Objective*: that is, as the power of the Church variously distributed.

(2) *Subjective*: that is, as the collection of persons enjoying this power, according to their grade.

2. As the power of the Church is threefold so is the hierarchy. There is therefore:

- (1) A hierarchy of teaching.
- (2) A hierarchy of jurisdiction.
- (3) A hierarchy of order.

3. But for practical purposes only the two latter need be noted.

4. In the hierarchy of jurisdiction, which differs essentially from that of order, are to be found all those who, in any way, exercise jurisdiction. This jurisdiction can be limited at will by the supreme lawgiver, and is exercised in *foro externo* or *foro interno*.

5. The hierarchy of order includes the four minor orders, the subdiaconate, the diaconate, and the priesthood.

6. The Council of Trent decrees :

(1) 'If anyone say that besides the priesthood there are not in the Catholic Church other orders both greater and minor by which, as by certain steps, one tends towards the priesthood, let him be anathema.'

(2) 'If anyone say that in the Catholic Church there is not a hierarchy instituted by divine authority which consists of bishops, priests, and ministers, let him be anathema.'

Sess  
xxiii. 2

## HOLY EUCHARIST

1. Considering the sacrament of the Holy Eucharist according to canon law, the following points have to be noted :

2. As it is probable that the sacrament cannot be confected except in the Sacrifice the consecration of both species is necessary. Hence it is the common and certain opinion that it is not lawful to consecrate only one species even for giving Viaticum (*q.v.*) to the dying.

3. 'We define that the Body of Christ can be truly confected in unleavened or in leavened wheat bread, and that priests in either should confect the very Body of the Lord, each one according to the custom of his Church, whether Eastern or Western.' Benedict XIV., Constit. *Etsi Pastoralis*, 1742, prescribed this under penalty of perpetual suspension *a divinis*.

Eugenius  
IV. *Decretum ad Armenos*

4. The sacred species are to be renewed every eight days, or at least every fifteen days.

5. As regards the form, the Roman Missal says : 'If anyone lessens or changes anything in the form of consecration, so that the words do not signify the same thing, he does not confect the sacrament ; if he add anything which does not change the meaning, he confects indeed, but sins most gravely.'

S.C.R.  
3 Sept.  
1672, and  
16 Dec.  
1826  
*Rubricae Generales*

6. The priest is the ordinary minister of the sacrament ; the deacon (*q.v.*) is the extraordinary minister. The right to give

the sacrament to the people, at least, in satisfaction of the Easter precept, or as viaticum, belongs to the parish priest. Hence on such occasions for another priest to minister the Holy Eucharist without the parish priest's leave, either expressed or tacit, is to injure those parochial rights *in re gravi*.

7. Pius IX., *Constit. Apostolicae Sedis*, decreed excommunication *latae sententiae* reserved to the Roman Pontiff, against religious who presume, *extra casum necessitatis*, to administer the sacrament of Extreme Unction or the Eucharist as *Viaticum* to clerics or laics without the leave of the *parochus*.

8. According to the *Rituale Romanum* the rule is that communion is to be given in the mass after the communion of the celebrant; but it can be given at other times *ex rationabile causa*, according to the determination of the bishop, whom the faithful are bound to obey. Benedict XIV. says that they err who give the Holy Eucharist after mass without any discrimination.

9. Communion can be given at any hour of the day except at the end of the day; at night, only in cases of necessity. It is not allowed to be given on Good Friday except to the sick; nor on Holy Saturday except in places where there is a custom.

10. Communion cannot be given in a private oratory without the special leave of the ordinary.

11. Frequent and even daily communion is commended by the Popes and the Fathers. The Council of Trent desires that the faithful should communicate at each mass. There is required in each person availing himself of this privilege the due and convenient dispositions.

12. Regarding the subject of the sacrament the Council of Trent declares that the Holy Eucharist is not necessary for children who have not come to the use of reason.

13. The precept of receiving under both kinds does not oblige the laity, but only priests when sacrificing.

14. As the law of communicating binds *in articulo mortis*, Viaticum can be given to children, even if there be a doubt as to their capacity for discerning the Body of Christ.

15. The Church has determined the time for receiving the Holy Eucharist to be at least once a year, and that at Easter.

(1) 'Let everyone of either sex, after coming to the use of reason, confess at least once in the year . . . reverently receiving at least at Easter the sacrament of the Eucharist, unless, by chance, at the advice of their own priest, for some reasonable cause, they abstain for a time from receiving; otherwise alive let him be prevented

*De Sacrificio* RUBA  
*Missa*,  
lib. iii.  
c. 18, n. 9  
Gardi-  
nelli,  
n. 4815

Benedict  
XIV. *loco*  
*citato*,  
n. 14  
Sess. xxii.  
c. 6

*Cf. Sess.*  
xxi. c. 4

*Cf. ibid.*  
c. 1

Council of  
the Late-  
ran IV.;  
and Trent,  
Sess. xiii.  
c. 9

from entering the church, and dead let him want Christian burial.'

(2) The time is from Palm Sunday to Low Sunday unless the time be extended by Indult.

16. Children are, as a rule, not bound to communicate before nine or ten years of age, nor should their communion be put off beyond twelve or fourteen.

17. The place for this Easter communion is the parish church except with the leave certainly presumed of the lawful pastor, i.e. the Pope, the bishop, or the parish priest. On Easter Sunday communion cannot be given in churches of regulars without the leave of the parish priest.

S.C.E.R.  
21 Jan.  
1848

18. As regards the internal dispositions of the recipient, the Council of Trent declares that it is not sufficient for anyone in a state of mortal sin to elicit an act of contrition, but he is bound to confess his sins before communicating except in two cases :

(1) If a confessor be wanting.

(2) If there be a necessity for celebrating or communicating.

Doctors hold that the necessity must be urgent and grave ; and that a confessor cannot be had without great difficulty, which is to be judged according to the circumstances of each case. The Council also orders that if *necessitate urgente* a priest celebrate without previous confession, let him confess *quam primum*.

19. Fasting from midnight is an ecclesiastical rule ; and it can be broken in three ways :

(1) When what is taken be taken from the outside.

(2) When it be taken by way of eating or drinking.

(3) When it has the nature of food or drink.

20. Fasting communion is not necessary in three cases :

(1) In danger of death.

(2) In danger of sacrilege.

(3) In cases where a grave scandal would arise from the omission of the sacrifice or communion.

21. The Holy See grants a dispensation from the fast in favour of persons who are ill for a long time and are unable to keep the Eucharistic fast. The petition must receive the consent of the ordinary. In the faculty leave is given to receive the Holy Eucharist a certain number of times in the week after taking something to drink ; and the Holy Office, 7 Sept. 1897, declares that the clause *per modum potus* means that the sick person can take broth, coffee, or other liquid nourishment in which bread-crumbs or other substance is mixed, provided that the mixture keeps its nature of

liquid food. This dispensation can be obtained either from the Holy Office direct or through Propaganda.

22. The First Westminster Council makes the following decrees concerning the Holy Eucharist as a sacrament :

xviii. n. 8

(1) 'The faithful must be exhorted and stirred up to frequent communion, and must be reasonably reminded of the necessity of communion to gain the holy indulgences, not only at certain fixed times of the year, but very often as far as can be done, provided they lead lives worthy of such a grace and dispose themselves by a devout preparation.

n. 9

(2) 'In order to promote devotion to the Blessed Sacrament more and more, it is very desirable that the doors of the church be kept open for the faithful during the whole day, or in country places for some hours, and that all be taught to visit and adore their most loving Saviour hidden in the most Holy Eucharist, to make supplication with fervent prayers and at the same time to refresh the soul by a spiritual communion.

n. 10

(3) 'To increase the piety of the faithful it seems also highly expedient to establish all over England the forty hours' prayer, so that at every instant of time some reparation may be made to our Lord so grievously offended, and prayers offered for the peace of the Church and the salvation of souls.

n. 11

(4) 'It is expedient also in order to promote devotion to this Divine Sacrament that, where it is practicable, the sodality of the Most Holy Sacrament be established, the members of which shall provide for the service of the altar, for processions and other functions. This sodality . . . should . . . be established in every congregation prior to all others.

n. 12

(5) 'Although, on account of the circumstances of places, the most Holy Viaticum cannot, without danger of sacrilege and scandal, be taken to the sick publicly and solemnly, and consequently the Holy See has already allowed us to carry It without a light and secretly, nevertheless the priest should not forget that he has the Hidden God adhering to him, and is bearing Him along with him for the solace of His people. Reverently, therefore—nay, devoutly, and as if fixed in contemplation—he should convey to the house of the sick person the most Holy Sacrament having It suspended from his neck in a bag becomingly or richly adorned. And as the dwellings of our poor are often most wretched, so that the sacred Viaticum can scarcely with decency be administered in them, we declare it to be a very commendable practice, and recommend it to all, for the priest to carry with him or send on beforehand a

small case furnished with all things requisite for the decent administration of the Blessed Sacrament. As soon as possible the pyx, after the communion of the sick, must be brought back to the church and replaced in the tabernacle till it be purified.

(6) 'The consecrated hosts,'<sup>1</sup> both those for the communion of the faithful and for benediction of the Blessed Sacrament, must be frequently renewed. The pyx should also be purified to prevent the accumulation of particles with the danger of irreverence in administering. n. 13

(7) 'Also: "Let all corporals, palls, and other altar-linen be kept whole and very clean, and let them be often washed by the persons appointed by the canons" (viz. as to corporals and palls, by the priest himself where there is no sub-deacon), "through reverence and on account of the presence of our Saviour and of the whole court of heaven, who, there is no doubt, are present in the confecting of this sacrament and when it is confectioned."<sup>2</sup> n. 14

(8) 'The tabernacle must be kept empty of everything else, "wherefore let not the holy oil vessels nor relic cases nor the chalice nor purificators be kept there": the Holy Eucharist alone with the vessel containing It must be kept there; nothing else. n. 15

(9) 'A lamp should burn day and night before the Holy Eucharist reposing in the tabernacle. The pyx should be covered with a veil of white silk or a golden one. n. 5

(10) 'If, on account of danger of sacrilege, the Holy Sacrament cannot be kept safely on the altar, or even in the church, there should be fitted up a suitable retired place, approved by the bishop, where it may be preserved, with a lamp always burning according to the above decree. n. 6

(11) 'The most Holy Sacrament ought not to be kept in oratories unless they belong to the mission, and are therefore considered to be public. But even in this case the key of the tabernacle ought not to be entrusted to the sacristan or to any other person; but let the priest alone keep it in possession and burthen his conscience with frequently renewing the sacred hosts. n. 7

(12) 'That there may be no doubt regarding the matter of the sacrament, it is not to be allowed for anyone to prepare the hosts to be consecrated, but this duty should be entrusted to confidential persons only, and, if it pleases, to nuns. The wine also n. 16

<sup>1</sup> The Provincial Council of Oxford, 1222, directs that 'the consecrated hosts should not be kept beyond seven days, but that they be renewed every week.'—Wilkins, I. p. 594.

<sup>2</sup> From the Council of Oxford, *ut supra*.



for the Sacrifice should not be procured from innkeepers, nor from any wine merchant, as it is well known that such persons often do not sell pure wine; but every diligence must be had, the bishops taking care of it that wine from the fruit of the vine be available everywhere for the priests.

n. 17.  
Granted  
14 May,  
1853

(13) 'Since, on account of the scarcity of priests, it is impossible in many places to hear the confession of all the faithful within the limits of the Paschal time, it seems advisable to petition the Sovereign Pontiff to extend the said time for all England from Ash Wednesday to Low Sunday inclusively.'

23. The time for fulfilling the Paschal precept is extended in various countries, *e.g.* :

(1) In Ireland the time is from Ash Wednesday to the octave of SS. Peter and Paul.

(2) In Scotland, in some dioceses from the First Sunday in Lent to Low Sunday, in others to the Sunday after the Ascension.

### HONORARY CANONS

1. Honorary canons are, in law, those who are created solely *ad honorem* and without any expectancy of vacant prebends (*q.v.*) or any right to the same.

2. The S.C.C. 28 January, 1837, decreed that, although caution was required in instituting honorary canonries, yet where the necessity of the Church required it they could be instituted.

3. The causes recognised by the S.C.C. were old age, infirmity, or lawful hindrance.

Bouix,  
*De Capitulo*,  
p. 148

4. It is commonly denied that a bishop can create honorary canons without the consent of the chapter. The particular statutes and customs of each chapter must be consulted.

5. A lawful cause is required for the creation of honorary canons, and the number should be in proportion to the number of titulars. Some canonists say six or seven honorary canons to forty prebends, or two or three to ten.

6. The rights of honorary canons are :

(1) The title; but they do not come under laws which make mention of canons.

(2) The *insignia*.

(3) And sometimes a stall.

xi. n. 11

7. The First Westminster Council decreed: 'Merely titular, or, as they are called, honorary canons we forbid to be made.'

8. The S.C.P.F. by a decree 7 July, 1904, has allowed the

canons of English cathedrals to resign their canonries together with the duties annexed, but to retain the title, honour, and *insignia* as honorary canons.

(1) The causes allowed for this resignation are (a) infirmity, (b) old age.

(2) The conditions are (a) free and spontaneous resignation, (b) the consent of the bishop, (c) the advice of the chapter.

(3) The limitations are, that there must be never more than three honorary canons in each chapter.

### IGNORANCE

1. Ignorance is a want of knowledge; and, as in many cases ignorance excuses from the law, it is necessary to distinguish the various kinds.

2. Positive ignorance is that want of knowing which co-exists with a positive contrary error.

3. Privative ignorance is a privation of that knowledge in one who, by nature and condition, is able to know. This kind of ignorance is divided into:

(1) Ignorance *iuris*: that is, of the existence or meaning of the law.

(2) Ignorance *facti*: that is, what is also called inadvertence, inconsideration, and forgetfulness.

(3) Ignorance *poenae*: that is, of the penalties attached to breaking the law.

4. Negative ignorance is the privation of knowledge in one who is not apt to have such a knowledge.

5. Ignorance is also distinguished into:

(1) Antecedent, which is totally involuntary.

(2) Concomitant, which does not move the will.

(3) Subsequent, which does not take away what is voluntary.

6. Lastly, ignorance is divided into:

(1) Invincible ignorance, which is altogether inculpable.

(2) Vincible ignorance, which is culpable, for it is:

(a) Affected and is directly voluntary.

(b) Not affected and is indirectly voluntary. This last is sometimes also subdivided into *crass* and *non-crass*.

7. From these divisions and distinctions the following principles may be deduced:

(1) Invincible ignorance of the divine law or of the law of

nature excuses from fault and frees one from all punishment decreed by positive laws.

(2) Invincible ignorance, not only *iuris* but also *facti*, excuses altogether from fault; for where there is nothing voluntary there is nothing faulty.

(3) Invincible ignorance, which is antecedent or concomitant, excuses from fault.

(4) Vincible ignorance, whether antecedent or concomitant, does not excuse from fault.

(5) Vincible ignorance, which is not affected, lessens, in part, the fault.

(6) Ignorance *facti* or *iuris* which is vincible and culpable, but not crass, excuses from the penalty decreed by the law.

(7) Ignorance, either vincible or invincible, *poenae* but not *iuris* or *facti*, does not excuse from the punishment prescribed against transgressors except in the case of *censures*; for, in the common opinion, ignorance of censures excuses from incurring them; moreover contumacy (*q.v.*) is required.

8. Ignorance *facti*, if it concern oneself, is, as a rule, not to be admitted save, in rare cases, by way of exception.

9. Ignorance *iuris* is not generally admitted if it concern the law of nature. If it concern the meaning of the law it is considered to be vincible, as a person can find out, either by himself or by consulting others, what the law means.

10. Ignorance does not affect the validity of an act if it concern a law, properly called invalidatory, which prescribes the matter or form of the act.

11. Ignorance is no excuse in him who *ex officio* is bound to know.

12. Affected ignorance is contempt of the law and never excuses anyone.

13. Ignorance *facti* in one's own case or in that of another which *ex officio* should be known is not to be presumed. In other cases it has to be proved by the one who alleges it.

## ILLEGITIMATE CHILDREN

1. Illegitimate children are those who are not born in lawful wedlock, or, at least, not contracted *bona fide* before the Church.

2. Canon law recognises certain classes of illegitimate children :

(1) *Naturales*, i.e. the offspring of persons who at the time of conception or birth could be married.

(2) *Spurii*, i.e. the offspring of those who at the time of conception or birth could *not* be married.

(3) *Ex damnato coitu*, i.e. the offspring of those who neither at the time of conception nor of birth could be married.

3. Other terms for such children are :

(1) *Nothi* are the offspring of a married and an unmarried person.

(2) *Adulterini* are the unlawful offspring of parents who are both married.

(3) *Sacrilegii* are the offspring of one under vow.

(4) *Incestuosi* are the offspring of parents related by affinity (*q.v.*) or consanguinity (*q.v.*).

(5) *Nefarii* are the offspring of those related in the direct line ascending or descending.

4. *Naturales* are made legitimate by subsequent lawful matrimony between the two parents, even by marriage *ratum et non consummatum*. Hence *spurii* can never be legitimated.

5. The Pope can make legitimate all bastards as far as receiving orders, honours, and dignities ; for as illegitimacy induces irregularity the lawmaker can dispense his own laws.

6. The illegitimate are forbidden to be ordained unless they enter a religious order or are lawfully dispensed. If they are ordained they cannot receive prelacies without further dispensation.

7. The bishop and the chapter *sede vacante* can dispense for minor orders and simple benefices.

8. A bastard cannot obtain a benefice in the church in which his father has had a benefice, nor can he minister in any way, *e.g.* as sacristan or musician, in the same church, 'that the memory of paternal incontinency may be banished from all places consecrated to God, where piety and holiness are most especially be-  
seeming.' Trent, xxv. c. 15, d. r. *Ibid.*

9. The son of a priest lawfully begotten before orders cannot immediately succeed to the paternal benefice, but he can hold a benefice in the paternal church.

## IMMUNITY

1. Immunity is a right by which churches and other sacred places, also ecclesiastical persons and their property, are free and immune from secular burthens and duties, and from those acts which are repugnant to the holiness and reverence due to them.

Sess. xxv.  
c. 20, d. r.

2. Immunity of clerics, which is personal and real immunity, is *de iure divino*. The Council of Trent speaks of 'that immunity of the Church and of ecclesiastical persons which by the ordinance of God and by the appointment of the canons has been established.'

3. It is debated, however, whether the privilege *fori* be of divine or of human right. Some canonists make the following excellent distinction :

(1) Spiritual things are *iure divino* immune from secular power.

(2) Temporal things of the Church and of clerics are *iure humano* immune from the same power.

4. But by change of circumstances the Church does not now exercise her full rights of immunity. While utterly refusing to submit her spiritual causes to secular tribunals, she, by *concordat* (*q.v.*) or by custom (*q.v.*) expressly or tacitly allowed, permits temporal causes of ecclesiastics to be decided before the civil court (*q.v.*), though it is in her mind that this should only be in cases of necessity.

5. The local immunity of churches is, in principle, recognised by the civil court.

The Church does not forbid the clergy to fulfil the responsibilities which come to them in virtue of their citizenship. Thus, she preserves the *ius*, while not exercising it.

## IMPEDIENT IMPEDIMENTS

1. An impedient impediment is a hindrance to marriage arising from the reverence due to religion, or from the prohibition of lawful authority, or from another obligation already incumbent upon the contracting parties.

2. The impedient impediments do not affect the validity of the contract, but its lawfulness. The formal violation of one of these impediments is a grave offence against the Church's law.

3. The impedient impediments arising from the reverence due to religion are the following :

(1) The closed times, i.e. from the first Sunday in Advent until the feast of the Epiphany inclusive, and from Ash Wednesday until after Low Sunday. During this time marriages can, as a fact, be celebrated, but without solemnity and without the blessing, which is to be deferred until another season ; but in places where there is a particular law the leave of the bishop is required.

(2) Simple vows. The simple vows professed in a religious

congregation (except in the case of the Society of Jesus, where these simple vows, by privilege, are diriment impediments [*q.v.*]), or other vows privately made, whether of chastity, entry into religion, or of taking orders.

(3) Ignorance of the rudiments of faith.

(4) Mixed religions. *See* MIXED MARRIAGES.

4. The impedient impediments arising from the prohibition of lawful authority are those special prohibitions which the Pope or the diocesan bishop makes. The first causes of such inhibitions are, *e.g.*, the suspicion of a hidden impediment, either diriment or impedient; the necessity of avoiding scandal or disputes that may arise from the marriage. If the prohibition come from the Pope, and it be declared to nullify any attempted marriage, the impediment then ceases to be merely impedient. A bishop cannot make a diriment impediment. If the Pope or the bishop forbids a marriage because a cause has been instituted concerning *sponsalia* (*q.v.*) with another person carnally known, the prohibition has the force of a diriment impediment in places where *sponsalia* are held to change into matrimony *per copulam*, which supposes the matrimonial intention. But in places where the decree of *Tametsi* (*q.v.*) holds, the prohibition does not affect the validity of a marriage contracting in disobedience to it, provided that in the papal prohibition there is no *clausula irritans*.

*Cf.* Benedict XIV. *De Synodo*, lib. xii. c. 5, n. 3; and *Instructio*, S.C.P.F. 17 Jan. 1828. But see *Collectanea*, S.C.P.F. n. 2179

5. The impedient impediment of the third class arises from *sponsalia* contracted with another person, and not dissolved by mutual consent. This can be only removed by the Holy See.

## INDEX

*See under* ROMAN CONGREGATIONS

## INDULT

1. Indults are general faculties (*q.v.*) granted by the Holy See to bishops and others of doing something beyond the common law.

2. They are granted either on account of the peculiar circumstances of the country or for general necessities.

3. They are granted for five, ten, or fifteen years, or for a number of cases.

4. They are contained in certain formulas, and have the nature of personal privileges (*q.v.*) or quasi-privileges.

B B

5. These formulas, first drawn up by the Holy Office in 1637, are conveyed to bishops in English-speaking countries by the S.C.P.F., and they are divided into two classes, to wit :

(1) *Ordinary*, signed by Roman numerals, *e.g.* Formula I., Formula II., &c.

(2) *Extraordinary*, signed by capital letters, *e.g.* Formula A, Formula B.

6. In England the bishops have as the ordinary indult Formula II.

7. In the United States the ordinary indult is that of Formula I.

8. In Ireland, Formula VI.

9. In Scotland, Formula II.

10. Vicars apostolic as a rule have Formula I.

11. These indults, if considered in relation to the bishop's ordinary or quasi-ordinary jurisdiction, can be described as a special concession of a faculty which generally does not injure a faculty already possessed by another title, but is added to it.

12. Faculties contained in the indults are not granted *per modum officii*, nor are they delegations (*q.v.*) *ad universitatem causarum*. They are merely personal.

13. Hence they must be exercised by the bishop himself unless he have also the faculty of communicating them. This is granted in some of the formulas, forbidden in some, and restricted in others.

14. When the faculties of an indult are communicated, it is only as a kind of subdelegation. The person to whom they are committed is rather the bishop's commissary than his delegate.

## INQUISITION

*See under* ROMAN CONGREGATIONS

## INSIGNIA

1. *Insignia* are marks of dignity.

*Cf.* S.C.R.  
16 April,  
1861

2. As regards the *insignia* of canons by common law the use is restricted to the cathedral church or by times when the chapter appears *capitulariter*. Hence in preaching elsewhere or in the administration of the sacraments the use of the canonical *insignia* is not lawful.

3. By decree S.C.P.F. 14 May, 1853, canons in England are

allowed to wear the canonical *insignia* in the church to which they are attached, even though it be not the cathedral. A decree, dated 6 January, 1901, granted new *insignia* to the metropolitan chapter; by another decree, dated 28 April, 1903, the use of the former *insignia* is allowed in a canon's own church.

4. No *insignia* can be adopted or changed without the leave of the Holy See.

## INSORDESCENCE

1. Insordescence is the pertinacious, obstinate, and contemptuous remaining under censure for more than one continuous year.

2. The fact of insordescence must be proved juridically as to three points :

- (1) That there was knowledge of the censure.
- (2) That no reasonable cause excuses from the time-limit.
- (3) That the mind of the person is hardened.

3. The petition, within the year, for absolution, whether it be granted or not, is a sufficient proof of non-insordescence.

4. Insordescence in a censure passed on account of heresy is held to be *ipso facto* heresy itself without further sentence. If the censure were incurred for other reasons, insordescence is a presumption of an heretical opinion concerning the power of the keys.

5. Insordescence in excommunication pronounced for a criminal cause is held for a conviction of the crime.

6. Insordescence deprives *ipso iure* of benefices if the censure had not done so already.

## INSTITUTION

1. Institution is an ecclesiastical act by which a person who already has a *ius* to a benefice is put into actual possession thereof. Institution is necessary, for 'he who entereth not through the door into the sheepfold, but ascends in another way, is a thief and a robber.'

John x. 1 ;  
also  
Trent.  
Sess.  
xxiii.  
c. 7

2. Institution is also necessary by canon law : 'An ecclesiastical benefice cannot be possessed without canonical institution.'

3. There are several kinds of institution : *Collativa*, *Auctoriabilis*, and *Corporalis* or *Realis*.

4. *Collativa* is made when the ordinary, by word of mouth or



Ex c. 1,  
De Regulis  
Iuris in 6<sup>o</sup>

by written document, grants the title of a benefice to a worthy cleric presented to him by the lawful patron.

In c. Cum  
Satis,  
4 de officio  
Archi-  
diaconi

5. *Auctorizabilis* is the approbation for exercising cure of souls or the commission of souls to the care of the cleric. The Gloss says: 'The archdeacon without the mandate of the bishop does not commit the cure of souls; that is, he does not have *institutionem auctorizabilem*.'

6. *Corporalis* or *realis* is the induction into the actual possession of the benefice by which the lawful superior gives true and real possession of the benefice itself to the cleric upon whom it is conferred. This kind of institution is called *investitura, installatio, missio in actualem possessionem, or inductio*.

7. Collative institution belongs *de iure communi* to the bishop of the diocese, to the vicar-general, and to the vicar capitular *sede vacante*.

8. Auctorizable institution belongs *de iure communi* to the bishop only, or to prelates having territorial jurisdiction.

9. Corporal institution belongs *de iure communi* to archdeacons, and by custom to the bishop or to his delegate.

10. No one can institute himself, since between the giver and the receiver there must be a personal distinction.

11. There is no fixed time within which institution is to be granted, but it must not be delayed too long. An appeal to the metropolitan will result in a term being fixed for the episcopal institution, which, failing the institution, lapses to the metropolitan. St. Pius V., Constit. *In conferendis* lays down two months from the date of presentation as the limit within which a parish priest must be instituted; and, in the event of refusal or neglect, authorises recourse to the metropolitan, or to the nearest bishop, or to the Holy See.

12. Institution can take place by proxy.

13. The rite of induction differs in places; and in practice all lawful customs should be observed.

14. Institution can take place outside of the diocese.

## INSTRUMENTS

1. An instrument in law is any writing drawn up or produced for the purpose of proof.

2. Instruments are of two kinds:

(1) Public, which, in a strict sense, is a document drawn up by a public authority, *i.e.* a notary, with the observance of the

required formalities; in a broad sense, is any authentic private instrument usable for public purposes.

(2) Private, which are written either by a private person or without the prescribed formalities. Private instruments are authentic if they be attested by competent witnesses, or bear an authentic seal, or are otherwise authenticated in a lawful manner; and non-authentic if they be not authenticated in the above manner, *e.g.* ordinary letters.

3. Public instruments are of two kinds :

(1) Protocols, which are the rough drafts or minutes of a transaction which are afterwards written out in a fuller, clearer, and more orderly manner.

(2) Transcripts : that is, the final, original, and authentic document taken from the protocol.

4. The formalities chiefly required in a public instrument are as follows :

(1) The invocation of God, *e.g.* 'In the name of God. Amen,' or 'In the name of the Most Holy Trinity.'

(2) The date of the day, month, and year of our Lord.

(3) The name of the reigning Pontiff and the supreme civil ruler.

(4) The name of the place, *e.g.* city, house, street, where the business to which the instrument relates is transacted.

(5) The names of the two witnesses present when the business is done. It is not necessary that they should sign the instrument; but the fact of their presence must be mentioned by the notary. But if possible they should also sign the instrument.

(6) There must be no abbreviations in the document.

(7) It must be signed by the notary.

5. A public original instrument, of itself and without any other corroborative evidence, constitutes full proof until the contrary be proved. It is of the same value, therefore, as two concordant and unexceptional witnesses. This applies to the protocol as well as to the transcript; to authentic private instruments also, for these, by their authentication, have the same value as public instruments.

6. A non-authentic private instrument, generally speaking, constitutes full proof against the writer if he acknowledge the letter to be his, or if his denial be proved to be untrue. Such an instrument, as a rule, is no proof in the favour of the writer, nor against a third party.

7. Instruments are produced in court as proofs of an allegation.

As a rule they can only be produced after the contestation (*q.v.*) or the quasi-contestation.

8. The plaintiff is bound to exhibit his instruments to the defendant, who is not thus bound except where the instruments are common property.

9. The judge is bound to show all the acts of the trial to either party, for their acts are common property.

10. When a defendant produces an instrument to prove an allegation which is in his favour he must exhibit it to the plaintiff.

11. An original instrument is exhibited first of all to the Court, and it is then read in its entirety ; and the opponent, who is to be cited duly for the purpose, is allowed to take a copy of all that concerns the case.

12. Instruments can be impaired if it be proved by witnesses that they are not genuine or that they contain false statements.

### INTERDICT

1. An 'interdict' is an ecclesiastical sentence (*q.v.*) which deprives of the use of all divine offices, of some sacraments, and of ecclesiastical burial.

2. There are three kinds of interdict.

(1) Local, which does not affect persons, but only prohibits the divine offices being celebrated in the interdicted place.

(2) Personal, which does not affect places, but only the person who is interdicted. Hence the censure follows him wherever he goes.

(3) Mixed, which affect both persons and places.

3. Interdicts are also classed as :

(1) General, *e.g.* a general local interdict affects all the places contained in the territory under censure, as all churches within a diocese. A general personal interdict concerns all the members of the body affected, as a chapter, a college, the inhabitants of a specified place or region, or a family, whether innocent or guilty.

(2) Special, *e.g.* a special local interdict affects one particular spot as a church ; a special personal interdict concerns specified persons either by name or generally, as all those who take part in such or such business.

4. Interdict is either a censure (*q.v.*) or a punishment (*q.v.*).

(1) As a censure it requires contumacy (*q.v.*), and must be without limitation of time. Infringement of this kind of interdict induces irregularity (*q.v.*).

(2) As a punishment, contumacy is not required, and the interdict is limited. No irregularity is incurred by disobedience.

5. The clergy are not considered to be interdicted if the people are struck with the sentence, nor are the people if the clergy are affected, unless both are mentioned in the sentence as interdicted. In a general interdict of the clergy, religious of either sex are not included unless mentioned as falling under the sentence. The law also requires that bishops should be mentioned in the sentence, before they are considered as affected by an interdict.

6. The effects of an interdict are :

- (1) The privation, active and passive, of certain sacraments.
- (2) The active privation of the divine offices.
- (3) The privation, active and passive, of ecclesiastical burial.

7. In the time of interdict :

(1) The sacraments of Holy Eucharist, Extreme Unction, and Order cannot be administered or received.

(2) Baptism can be conferred solemnly, but not by one specially interdicted except in cases of necessity.

(3) Confirmation can be given solemnly but not by him who is specially interdicted ; nor to him who is the cause of the interdict unless he repents and makes, or promises to make, due satisfaction.

(4) Penance can be given, but not by one specially interdicted except in cases of necessity, nor to the one who is the cause of the interdict, or is specially interdicted, unless he repents and makes, or promises to make, due satisfaction. But as interdict does not take away jurisdiction, but only the use thereof, the sacrament most probably is valid if given by one interdicted.

(5) Viaticum can be given in danger of death, but not to one specially interdicted nor to the cause of the interdict unless he repents and makes, or promises to make, due satisfaction.

(6) Extreme unction can be administered if the sick man be not able to receive any other sacrament.

(7) Order is only forbidden to those under the sentence and in an interdicted place.

(8) Matrimony can be celebrated both in a place interdicted and between persons interdicted, even if they be specially interdicted, if they repent. But the solemn blessing cannot be given to the spouses, as this falls under the head of divine offices which are forbidden.

8. In the time of an interdict there are forbidden :

- (1) The public celebration of mass.

(2) The public chanting or recitation of the divine office *in choro*.

(3) Public and solemn blessings.

9. Boniface VIII., Constit. *Alma Mater*, allows mass and office to be celebrated every day during a general local interdict under the following conditions :

(1) If celebrated *submissa voce*.

(2) Within closed doors.

(3) Excluding those excommunicated and denounced as to be avoided.

(4) And without the ringing of bells.

But on the feasts of Christmas, Easter, Pentecost, and the Assumption B.M.V. the divine offices can be celebrated as usual, provided that those who are the cause of the interdict are not allowed to be present. Martin V., Constit. *Ineffabile*, extended this mitigation to the feast and the whole octave of Corpus Christi ; and Leo X. granted the same to Spain for the feast of the Immaculate Conception.

10. In a special local interdict the clergy cannot, even privately, on the greater feasts celebrate the divine offices in the place interdicted. But one mass may be said each week to renew the Holy Eucharist.

11. But if the interdict be specially personal or generally personal the divine offices are forbidden to all everywhere and always.

12. The third effect of an interdict is the privation, active and passive, of ecclesiastical burial.

(1) In a general local interdict the faithful must not be buried in sacred ground. Clerics, unless they have been specially and personally interdicted, or have given cause for the interdict, can, however, be buried in silence and without solemnity provided they have observed the local interdict. They can even be buried in a church under special interdict.

(2) In the time of a general local interdict the faithful who are not personally interdicted can be buried elsewhere. But if the interdict be personal, either generally or specially, they are excluded altogether from ecclesiastical burial anywhere.

13. A diocesan bishop, as delegate of the Apostolic See, can interdict regulars, even if exempt, if they do not observe a diocesan interdict or if they do not give him in their churches the customary marks of respect ; or if they refuse, after one warning, to come to processions of obligation.

14. The obligation of observing an interdict is a most grave

matter, and induces either irregularity *ipso facto* or serious punishment *sententiae ferendae* in cases of disobedience.

### INTERNAL FORUM

1. The internal *forum* is that in which jurisdiction is exercised primarily and directly in reference to the private utility of the faithful. It is also called the Tribunal of the Conscience.

2. The internal *forum* is of two kinds :

(1) The penitential, which is only concerned with the sacramental confession of sins, and exists only in regard of the same.

(2) The extra-penitential, which is concerned with dispensation of vows, irregularities, &c., and may exist outside of the Tribunal of Penance.

### INTERSTICES

1. Interstices are the periods which, by law, must elapse between the reception of one order and the reception of another.

2. The periods have varied, but the present discipline is found in the Council of Trent.

(1) As regards the minor orders the Council decrees that the appointed interstices should be observed between the orders unless the bishop thinks otherwise. The reason for these interstices is given by the Council: that they may be better instructed in the importance of this profession, and be practised in the office and function of each order.

(2) A year must elapse between the last minor order and the subdiaconate, except the necessity or the utility of the Church be judged by the bishop to require otherwise.

(3) The interval of a year is required between the subdiaconate and the diaconate; and also between this last order and the priesthood.

Sess.  
xxiii.  
11, 13, 14

3. The year is an ecclesiastical year, *i.e.* from the Whitsuntide Ember days to the same days in the following year.

4. The same Council allows bishops to dispense in cases of necessity or utility. In the case of dispensing the interstices between the diaconate and the priesthood there must be both necessity and utility.

5. Vicars general and vicars capitular have the power of dispensing the interstices. Regular prelates have to obtain the dispensation for their subjects from the bishop of the diocese.

6. The four minor orders and the subdiaconate are not allowed to be conferred on one and the same day.

Sess.  
xxiii.  
13, d. r.

7. Two sacred orders are forbidden by the Council of Trent to be given, even to regulars, on the same day.

8. The First Council of Westminster decreed :

xxi. n. 4

‘As far as possible the interstices should be duly observed, so that each one, before he be raised to a high grade, may have frequent opportunity of exercising the order already received, and thus maturely may learn the rubrics.’

## INVENTORIES

1. The Second Council of Westminster orders :

viii. 12

‘When, therefore, any priest first enters on a mission, let him receive from the vicar foran (*q.v.*) or from some one deputed by the bishop an inventory of all things belonging to the mission.’

2. Hence the obligation of supplying the incoming rector with the inventory rests upon the vicar foran or rural dean or on the bishop.

3. Two copies at least of the inventory of each church should be drawn up and signed ; one to be sent to the episcopal archives and one preserved among the local documents. These should be compared, from time to time, during the material visitation of a parish.

## IRREGULARITY

1. Irregularity is a canonical impediment which forbids the reception of orders and the exercise of those received. It is an inhability constituted by canon law, and therefore admitting dispensation. It applies to the first tonsure as well as to the actual orders.

2. Irregularity differs from censure (*q.v.*), for this is a medicinal punishment inflicted on account of the commission of a fault, and is designed for the announcement of an evil-doer ; whereas irregularity is not primarily and immediately devised for a punishment or for the amendment of an evil-doer, but for sustaining the honour of the sacred ministry, which demands that those who are chosen for the service of the altar should be whole of body and pure in mind. Hence irregularity, unlike censure, does not necessarily

suppose the presence of a moral fault. It is, however, sometimes incurred as a vindictive punishment, but that is a secondary purpose and the indirect consequence of a censure.

3. There are several points to be observed about irregularities in general :

(1) No irregularity can be incurred unless it be expressed in the law. Hence it cannot be inflicted by the sentence of a judge.

(2) Irregularity is contracted before any sentence by a defect or by a hidden crime.

(3) Irregularity is not removed by absolution, but by dispensation.

(4) A person can be affected by many irregularities of the same kind incurred by the same cause oftentimes repeated. Hence he requires express dispensations from them all.

(5) Irregularity does not impede the use of jurisdiction which can be exercised without an act of order. Hence a parish priest who is irregular can delegate another to confer those sacraments which he himself cannot minister. His absolutions are valid, for irregularity has not taken away the jurisdiction itself.

4. Irregularity is total or partial as it affects some or all exercise of orders received, some or all ascent to higher orders.

5. The sources of irregularity are twofold :

(1) *Ex delicto*, which must be external and complete.

(2) *Ex defectu*, which is often without any moral fault.

6. There are four irregularities arising *ex delicto* :

(1) That arising from unjust homicide, which is voluntary *in se* or *in causa*, and from voluntary unjust mutilation either of one's own member or that of another's.

(2) That arising from an unconditional, notorious, and solemn reiteration of a true and perfect baptism. This irregularity affects the one so rebaptizing, the person rebaptized, and him who ministers to the rebaptizer.

(3) That arising from the forbidden exercise of orders, either by exercising an order which has not been given, or by exercising an order already received whilst under a censure which forbids the exercise of that order. To incur this irregularity the exercise of the order must be *ex officio*, temerarious, with knowledge, and with solemnity. The irregularity is also incurred by knowingly celebrating in a place interdicted by name, or by celebrating several times in the day without leave.

(4) That arising from heresy, apostasy, or schism. This affects



those who have been baptized in heresy as well as those who have fallen away from the faith. Schism only induces irregularity when it is joined to heresy.

7. There are four irregularities arising *ex defectu*.

(1) That arising from a defect of the soul. Hence those are irregular who have not the use of reason; who have not the learning required for orders; who are born of parents who remain or die in heresy; and those who are unconfirmed in the faith, as in neophytes.

(2) That which arises from a defect of body, viz. integrity, proportion, or health. Hence one who cannot perform an ecclesiastical function with the dignity and decorum demanded is irregular, e.g. the dumb, deaf, blind, or epileptic; those whose hand—or at least the thumb and forefinger—has been amputated; those who cannot drink wine without consequent vomiting; those whose hands so tremble that they cannot hold the chalice safely; or who are so deformed as to excite ridicule or contempt. Concerning this last cause of irregularity *ex defectu*, judgment is left to the prudence of the bishop; but dispensation in all cases *ex defectu corporis* is reserved to the Pope.

(3) That which arises from a defect of state. This defect of state is found in matters concerning birth, liberty, good fame, and a sacrament. Hence the following persons are irregular:

(a) From a defect of state arising from birth, all illegitimate children (*q.v.*) unless legitimisation has followed birth.

(b) From a defect of state arising from liberty; all slaves; those in business or in secular offices who have to render an account of their administration; those who are married, unless, with mutual consent, they take advantage of the Church's laws in this regard; all who are professed religious unless they have their superior's consent.

(c) From a defect of state arising from good fame, all who, after sentence, labour under infamy *iuris* or are guilty of a notorious and public crime which, by the sacred canons, has annexed the mark of infamy.

(d) From a defect of state arising from the sacrament of matrimony, *i.e.* bigamy (*q.v.*).

(4) That which arises from a defect of mildness. This irregularity is incurred by one who voluntarily, actively, and proximately concurs either physically or morally, positively or negatively, in the death, even if just, or in the mutilation, of another. Hence he who concurs only remotely, necessarily in the death or mutilation,

does not incur irregularity. Neither do doctors, who cannot be accused of a defect of mildness by amputation.

8. Irregularity is removed in four ways :

- (1) By the cessation of the cause.
- (2) By baptism, except in the case of bigamy (*q.v.*).
- (3) By religious profession ; from the defect of birth as regards orders, but not dignities.
- (4) By dispensation. The Pope can dispense from all and every irregularity.

9. The archbishop, in the act of metropolitan visitation and in appeals, can dispense from occult irregularities of the subjects of his suffragans.

10. The bishop can dispense his subjects from all occult irregularities except from unjust voluntary homicide and other cases which are taken to the *forum externum*. He can also dispense irregularity arising from *bigamia similitudinaria*.

11. The vicar capitular *sede vacante* can dispense in all the cases of irregularity which fall under the ordinary jurisdiction of the bishop.

(*cf.* Trent,  
Sess. xxiv.  
c. 6, d. r.

12. Regular prelates, by concession, have in favour of their subjects the same privileges as bishops.

13. No distinct form of dispensation is required ; but the fact, the cause, and the effects should be expressed.

14. In a dispensation from irregularity of birth the clause *Dummodo paternae incontinentiae imitator non sit* is inserted, and the bishop must inquire whether the *orator* has led a moral life for the past ten years.

15. In the doubt whether one have incurred irregularity in the external *forum* the matter must be proved ; in the internal *forum* it is rather to be held, for safety's sake, that the irregularity has been incurred.

(*cf.* Bene-  
dict XIV.  
*Inst. Eccl.*  
101, n. 25

## IRREMOVEABLE RECTOR

1. In the United States the Third Plenary Council of Baltimore (1884) orders the bishop to select, with the advice of the diocesan consultors (*q.v.*), a certain number of missions, at least one in ten, as quasi-parishes and to set over them irremovable rectors or pastors. For the first twenty years after the promulgation of the Council it is advised that this number should not be exceeded except for good reasons.

2. The appointment of irremovable rectors was ordered to take place within three years from the promulgation, *i.e.* from 6 January, 1886.

3. The appointment is after *conkursus* (*q.v.*). But the bishop, with the advice of his consultors, can, for the first time, appoint an irremovable rector to a quasi-parish without the *conkursus*.

4. Only priests who have laudably exercised the sacred ministry for at least ten years in the diocese, and have given evidence of the capacity, can enter the *conkursus*; and from among those found worthy the bishop appoints the most worthy.

5. Irremovable rectors possess quasi-parochial rights.

6. They must make the profession of faith (*q.v.*) within two months from taking possession of their churches.

7. They have, concurrently with the diocesan consultors, the right of recommending candidates for a vacant see.

## IUS

1. The word *ius* has many meanings.

(1) Whatever is in any way good and equitable, or in harmony with the divine nature and human law.

(2) Whatever is conformable to the law.

(3) A lawful faculty of doing or of omitting, or of obliging another to do or omit, something.

(4) The science of law or jurisprudence.

(5) The sentence of the judge.

(6) The laws themselves; for to be true laws they must be based on justice.

2. *Ius*, taken in this last sense, *i.e.* for the laws themselves, is of two kinds:

(1) *Ius naturale*, consisting in laws so necessarily flowing from the nature of God and His creatures that they cannot but exist.

(2) *Ius positivum*, consisting in laws constituted by free will.

3. *Ius positivum* is divided into two classes:

(1) *Ius positivum divinum*, consisting in laws emanating from the free will of God.

(2) *Ius positivum humanum*, consisting in laws enacted by the free will of man.

4. *Ius positivum humanum* is itself divided into three kinds:

(1) *Ius canonicum*, or ecclesiastical law.

(2) *Ius gentium*, or that which all or almost all nations observe.

(3) *Ius civile*, or that which consists in the positive laws enacted

by the civil authorities for the temporal good of the commonwealth.  
See CANON LAW.

### IUS LITURGICUM

1. The *ius liturgicum* is a branch of the ecclesiastical law, and is concerned with the public worship of God.

2. It is certain that the supreme *ius* in all things concerning the Liturgy is vested in the Roman Pontiff; for the Council of Florence decreed that he has from Christ the full power to feed the universal Church, to rule and to guide it.

3. Thus St. Pius V., Constit. *Quod a Nobis* and *Quo primum tempore*, abolished all local rites, those only excepted which were approved of by the Apostolic See from their first institution or had a custom of two hundred years. Hence in England the ancient rites were not abolished nor taken away with the sanction of the Holy See.

4. It is also certain that bishops in their dioceses have a *ius liturgicum* by concession of the Holy See; but they depend upon the Holy See for its exercise.

5. Bishops cannot add to their own calendars or omit feasts of the saints &c. without the leave of the Holy See. Gardi-  
nelli

6. The ordinary is strictly bound to see that the rubrics and the decrees of the Sacred Congregation of Rites are faithfully observed; for Pius IX. confirmed a decree of that Sacred Congregation which declared that the formal written decrees and answers to doubts proposed have the same authority as if they emanated from the Pope himself, even if the matters had not been referred to him. Gardi-  
nelli  
S.C.R.  
23 May,  
1846

### JUBILARIANS

1. A canon jubilarian is one who has passed forty years of continuous and praiseworthy service in choir.

2. He is then privileged to be free from the obligation of choir, and retains, not only his prebend (*q.v.*), but also his share in the distributions (*q.v.*).

3. This privilege does not come from common law, but from the capitular statutes if they are approved of by the bishop.

4. Benedict XIV. holds that the S.C.C. grants this faculty to canons and to other *beneficiarij* of the cathedral; but if the divine worship suffer in consequence the bishop can withdraw the privilege. *Instit.*  
107, § 9.  
n 61

## JUDGE

1. A judge is one who is vested with lawful authority to hear and pronounce sentence (*q.v.*) upon causes in litigation in the external ecclesiastical *forum*.

2. There are various kinds of ecclesiastical judges :

(1) Judges by divine right, *e.g.* the Pope ; judges by ecclesiastical right.

(2) Judges ordinary, who have a right inherent in their office or dignity, *e.g.* bishops in their dioceses ; judges delegate, who exercise another's jurisdiction at his mandate or by law.

(3) Judges who can individually exercise their powers ; judges who can only exercise their powers collectively.

(4) Judges who are appointed by authority ; judges who are chosen by the litigants, either voluntarily or at the command of the law. *See* ASSESSOR.

(5) Judges *a quo*, from whom appeals are made ; judges *ad quem*, to whom appeals lie.

(6) Judges who are deputed for all causes ; judges who are deputed only for particular causes.

3. The ecclesiastical judges are :

(1) The Pope, the sacred congregations and Roman tribunals, metropolitans in their provinces, bishops in their dioceses, and other prelates, *e.g.* the vicar general, having ordinary jurisdiction in the external *forum*.

(2) Legates, nuncios, apostolic delegates (*q.v.*), and visitors.

(3) Synodal judges (*q.v.*).

(4) The judge of the diocesan ecclesiastical court.

(5) Extraordinary judges deputed *ad hoc*.

4. The following persons are disqualified by nature or by law from acting as judges :

(1) The deaf, or dumb, or insane, or illiterate.

(2) The infamous, whether *iuris* or *facti*, women, minors, or lay persons. Laics are excluded from acting as ecclesiastical judges save by the appointment of the Pope ; but with the bishop's leave they can act as assessors in an ecclesiastical trial.

5. As the more important offices *ex iure communi* are raised to the nature of benefices, and as both Boniface VIII. and the Council of Trent decreed that ordinary and delegate judges should have their proper support from benefices, so that they might be independent in administering justice, it would seem that judges should

be, as a rule, irremoveable. This certainly is in keeping with the modern idea of the sanctity of the judicial office.

6. The judge's method of action is twofold :

(1) He sometimes acts *ex officio nobili* : that is, not at the request of parties, but because the law and equity demand that he should take action. In this case the postulation of others is an impulsive cause, but not a motive cause of his interposition. This takes place in criminal actions or when the common good requires.

(2) He sometimes acts *ex officio mercenario* : that is, at the instigation of parties who come before his tribunal to settle their disputes. This takes place in civil actions.

7. The obligations of a judge are as follows :

(1) He must have sufficient knowledge. If he find that he has made a mistake to the injury of one of the litigants, he is bound to correct it to the best of his ability.

(2) He must expedite trials and not waste the time and money of the parties by deferring for any notable time the hearing without just cause.

(3) By laws, human and divine, he is forbidden to accept gifts from the litigants. But if he have no fixed stipend, hearing fees can be demanded for the necessary expenses of the court.

(4) As the judge is the guardian of the law, so he must avoid all arbitrary action. He must use the *regulae iuris* (q.v.).

8. In a trial the office of the judge is to apply the law to the fact. Hence in every trial the judge must make clear both what the law really is and what is the fact. This latter he does by the examination and cross-examination of the witnesses and by bringing the allegations to the proof. Until this is done he cannot apply the law.

9. The judge acting *ex officio nobili* has to judge *ex actis et probatis*, for he is not acting as a private individual ; and for him *quod non sit in actis non est in mundo*. Hence if he knows privately any fact or circumstance which does not in any way appear by the evidence he cannot take this into account in passing sentence unless what is omitted be notorious, for *in notoriis nulla probatio*. The same applies when he is acting *ex officio mercenario*, for the burthen of proof lies upon the parties. But if it be a serious matter he may by examination bring what he knows privately into the *acta et probata*.

10. For the validity of a judge's proceedings besides his com-

c c

petency, there must be no circumstances which by law would make the sentence null and void. Thus :

(1) No one can be a judge or assessor in a cause in which he has previously appeared as an advocate.

(2) No one can pronounce sentence in a cause if, as a private person, he be engaged, either as plaintiff or defendant, in a similar cause.

(3) No one can be judge in his own cause.

11. This last has certain exceptions. Thus :

(1) If he be the supreme judge.

(2) If the matter refer to the exercise of voluntary jurisdiction.

(3) If the facts be notorious, and therefore need no proof.

(4) If his own person be not directly affected.

(5) If it be a case of doubtful competency which he decides in his own favour. But in this case canonists hold that he cannot act :

(a) When the supposed defect of jurisdiction affects his own person, *e.g.* if on the ground of excommunication or infamy.

(b) When he is challenged as suspect, unless the challenge be held as only frivolous.

(c) When he receives a notable benefit by trying the cause.

But in all these cases, however, it is more conformable to natural law that the cause be committed to other judges, either ordinary or delegate.

12. An ordinary judge, except the vicar general, can delegate his powers. The delegated need not be a subject of the ordinary judge, but, if he be, he cannot refuse the office. He cannot act before he has received the letters of his delegation ; and he is bound to show them if required to do so by either party. While his powers are defined and limited by his letters of delegation he can take cognisance of all matters that are connected with or accessory to the cause before him.

13. If several persons are delegated for a certain matter the act of the delegation must be carefully scrutinised, for they may only have power to act collectively, or severally, or singly.

14. In passing sentence (*q.v.*) the judge cannot act by a less probable opinion. In equal probabilities he must incline to the defendant or possessor, except in cases of wills, liberty, and marriage.

15. As regards the action of the members of the Commission of Investigation (*q.v.*), since they exercise judicial functions so far as investigating is concerned, they, like all judges, can only decide by the evidence, not by what is their own private

knowledge; though if necessary they can use this to have it brought out in evidence.

### JUDGMENT

1. A judgment is a sentence (*q.v.*) of a lawful judge.
2. It requires the participation of at least three persons :
  - (1) The judge who pronounces the sentence.
  - (2) The plaintiff or accuser (*q.v.*) who pleads against.
  - (3) The defendant (*q.v.*) or accused who is summoned.
3. It must be given with the due formalities.
4. It is of two kinds :
  - (1) Final. (2) Interlocutory. See SENTENCE.

### JURISDICTION

1. Jurisdiction is the authority of ruling: and ecclesiastical jurisdiction, which alone here concerns us, is that authority instituted by Christ in the Church of ruling subjects in all matters which concern the worship of God and the spiritual health of souls. It is exercised in the external *forum* and in the internal *forum* (*q.v.*), and it comprises the legislative, judicial, and executive powers.

2. Jurisdiction is divided into :

(1) Voluntary: that is, the jurisdiction which a bishop or superior can exercise anywhere, and without any judicial formalities, upon those of his subjects who are willing.

(2) Contentious: that is, what is exercised over those who contend before the judge according to the forms prescribed for judicial acts. It cannot be validly or lawfully exercised out of the territory over which the prelate holds sway, except with the leave of the local ordinary. This kind of jurisdiction extends over subjects who are unwilling and have to be forced to appear before the tribunal.

3. Jurisdiction is also classed into :

(1) Ordinary, which exists by law, custom, or privilege, and is attached to some office or dignity.

(2) Delegated, which, as a rule, is communicated by one who has ordinary jurisdiction. It is also sometimes given by law: *e.g.* by the Council of Trent, to bishops as the delegates of the Holy See in regard of exempted regulars.

4. Jurisdiction is divided into :



(1) Universal—that is, unlimited to persons, places, and matters. This only belongs to the Pope and Œcumenical Councils.

(2) Particular—that is, limited to persons, or places, or matters. This, by its very nature, is susceptible of increase or of decrease at the will of the supreme authority.

5. Lastly, jurisdiction is :

(1) Immediate: that is, when it can be exercised at all times and not merely in cases of necessity, *e.g.* the authority of the Pope in the whole Church, of the bishop in his diocese, and of the parish priest over his parish in certain matters.

(2) Mediate: that is, which can be only exercised in certain cases determined by law, such as the authority, in times of visitation, and appeal, of metropolitans over the subjects of their suffragans.

6. Jurisdiction can be acquired in three ways :

(1) By a privilege of the supreme authority.

(2) By law or office.

(3) By custom.

7. Ordinary jurisdiction is attached by law or custom to the office itself. Hence the mere fact of appointment to a position, having such jurisdiction attached to it, includes the grant of ordinary jurisdiction. As it is a grace to the holder of the office, it does not cease at the death of the giver.

8. The title of ordinary implies one who has ordinary jurisdiction, but it is used in law only for those who have it in the external *forum*. Hence diocesan bishops are ordinaries ; parish priests (*q.v.*) are not.

9. Delegated jurisdiction is not a grace but a mandate to do something in the name of a superior. If it come from the superior himself, this jurisdiction is extinguished by the death of the superior if the business delegated has not yet begun. If it come from the law or from the Holy See it only expires in the usual way. *See* DELEGATION.

10. The same person may have both ordinary and delegated jurisdiction in a particular case. Thus bishops by law get certain jurisdiction *tamquam Sedis Apostolicæ delegati* and *etiam tamquam Sedis Apostolicæ delegati*. In the former case bishops act only by delegated jurisdiction ; hence appeals from their sentences lie only to the Holy See. In the latter case, as they may act either by their ordinary or by their delegated jurisdiction, it is necessary to know which power is used ; for if it be the ordinary jurisdiction which they employ, the appeal will lie to the metropolitan.

11. Jurisdiction, being an act of the will, differs from approbation (*q.v.*) which is an act of the understanding that simply judges as

to the fitness of a person. Hence jurisdiction is required in a confessor for the validity of his absolution. *In articulo mortis* the Church gives the necessary jurisdiction to all priests. Regular confessors get their jurisdiction immediately from the Pope; their approbation from the diocesan ordinary.

12. Jurisdiction can be lost in several ways :

(1) By death. (2) By resignation. (3) By translation. (4) By withdrawal.

## KNOWLEDGE

1. There are three kinds of knowledge :

(1) Eminent, when one is able, promptly and without turning over books, to answer difficult questions.

(2) Mediocre, when one is able to resolve difficult questions after deliberation and consulting books.

(3) Sufficient, when, taking into consideration the nature of the person and position, one is able to discharge what belongs to his office.

2. Generally speaking, it is certain that prelates and those holding ecclesiastical office require the knowledge which is sufficient for the due performance of their duties. 'Though in bishops eminent science is to be desired, nevertheless mediocre or even sufficient is tolerated in them.'

Reiffen-  
stuel,  
lib. i.  
lit. 6,  
n. 207

3. For certain offices some academic degree is required in one who is to be promoted. Thus, *ubi fieri potest*, the archdeacon should be a doctor in theology or a licentiate in canon law. The canons theologian and penitentiary should be doctors or licentiates in theology or law, if such can be found in the diocese. Vicars capitular should be doctors in canon law or licentiates in the same faculty. And bishops must be doctors or licentiates in theology or canon law.

Trent,  
Sess. xxiv.  
c. 12, d. r.

*Ibid.* and  
S.C.C.  
23 Feb.  
1709

## LAITY

1. By divine ordinance the state of the laity is conceived as distinguished from the state of the clergy; hence in the ecclesiastical society the clergy should preside, and the laity should be subject. For clerics are here superior to the laity on two grounds :

(1) By the ministry of order.

(2) By ecclesiastical power of jurisdiction.

(cf. Sebastianelli, i. p. 435)

Hence the laity are subject to the clergy as regards ministry and ecclesiastical jurisdiction.

2. As regards the divine power communicated in the sacrament of Order, the laity depend upon the clergy for the sacraments except for private baptism in case of necessity and for matrimony of which the contracting parties are held to be the ministers.

3. As regards the ecclesiastical power of jurisdiction, the laity, even by the authority of the Pope, cannot ordinarily exercise ecclesiastical jurisdiction, for this is repugnant to the divine constitution of the Church. But, by delegation of the Supreme Pontiff, laymen can have extraordinary authority in ecclesiastical causes.

4. The laity can be arbitrators and assessors in ecclesiastical causes. They can also act as chancellors, notaries, advocates, and procurators.

5. The laity have a right to demand :

(1) That their clergy teach them the Catholic faith.

(2) That they faithfully administer the sacraments to them, and give them due opportunities of assisting at divine worship.

(3) That they admit them to the clerical or religious state.

(4) That they give them ecclesiastical burial with all Christian privileges.

6. They can also share in the administration of the temporal goods of the Church. *See* FABRIC.

7. They can have the rights of patronage (*q.v.*) and present to benefices (*q.v.*) and parishes which may be in their gift.

8. The Second Council of Westminster says :

viii. 1, 2

(1) 'The goods which are offered by the faithful for the propagation and ornament of religion, for the support of the clergy, the relief of the poor, and other pious uses, are considered as made to God and the Church; and their administrators or guardians, whether ecclesiastics or laity, are to be deemed nothing more than dispensers of them, and as having to render an account to God. . . . Effort must be made in every way to determine (if there be any doubt) the intention and mind of the donor or testator of each fund, and that the proceeds of it may be most accurately applied to the use prescribed by him.

*Ibid.* 9

(2) 'In every mission the moneys contributed by the faithful in the ways hereafter mentioned (i.e. *seat rents, offertories, collections by special sermons, house-to-house collections*) are to be accounted church property, and not presents given to the priest. From this money he must provide, not only for his own honest support, but also for the expenses of religious worship, for the main-

tenance of the fabric, for debts if there be any, and for other wants.

(3) 'Every administrator should keep what is called an open *Ibid.* 18 account at some bank in the names of two honest persons besides his own. These persons should know that they are only named to secure the money from any danger of being lost, and they must not interfere in the administration of it. If one of these fail through any cause, the two that remain will take care that another be chosen by the bishop to fill his place.' Therefore let no administrator for more than ten days keep on hand more than twenty pounds of money belonging to the mission: that is, of money which is not his own property; but he should diligently place it in the bank.'

9. The Second Plenary Council of Baltimore allows the layman to act with the bishop, vicar-general, and rector as trustees of the parochial property.

n. 198;  
also III.  
Plenary  
Council,  
284-287

## THE LATERAN DECREE

1. The Fourth Lateran Council, held under Innocent III. in 1215, decreed that all the faithful of either sex after coming to the age of discretion should confess all their sins at least once a year to their parish priests and, according to their powers, fulfil the penance enjoined to them, receiving reverently at least at Easter the Sacrament of the Eucharist unless by the advice of the parish priest they abstain for awhile. Otherwise in life they are to be prevented from entering the church, and dead they are to want Christian burial. This salutary decree is to be published often in the churches so that all may know. If anyone wishes to confess to another priest for any just cause he must first ask and obtain the leave of the parish priest.

2. It will be noted that the confession is to be at least once a year, but the time for communion is limited to 'at least Easter.'

3. By custom the law referring to confession to one's parish priest no longer obtains, but the Easter Communion must be made in the parish church.

## LAW

1. Law is the right reason of things to be done, set forth by public authority with the will of perpetually obliging men either to do or not to do something.

2. Law has several synonyms: *e.g.* *ius*, constitution, statute.

### § 1. *The Nature and Conditions of Law*

#### 3. The conditions of law are as follows :

1. It must be honest and just, for laws are made to help man to live honestly, not to injure his fellows ; they are made to give to everyone his right.

(2) It must be possible, for *nemo potest ad impossibilia obligari*.

(3) It must be natural, for no one can be obliged above the strength of his nature.

(4) It must be according to national custom, for custom is the best interpreter of law.

(5) It must be convenient to time and place, for laws should be made and modified according to the differences of places, the qualities of times and men.

(6) It must be necessary and useful, for law should introduce nothing new except under pressure of necessity.

(7) It must be manifest, not obscure, for otherwise it can be misinterpreted.

(8) It must be for the common, not private good, for that is the primary end of law.

4. The nature of law will also be seen in the difference between it and precept (*q.v.*). Thus :

(1) Law remains after the death of the lawgiver until repealed or a contrary custom obtains ; precept expires with the life or office of the prescriber.

(2) Law affects immediately the place or territory belonging to the lawgiver, and thence the subjects only when dwelling therein ; precept immediately affects the persons wherever they may be.

(3) Law imposes upon the whole community, not only now, but for the future ; precept imposes only upon individuals, and for the present time.

#### 5. Law is divided into :

(1) Eternal law, which is a certain ordinance of the Divine Will fixing and determining from all eternity what things are to be done or avoided by reasonable creatures in the pursuit of their true end.

(2) Temporal law is an ordinance established in time for a fixed end.

#### 6. Temporal law is subdivided into :

(1) Natural, which is a rule obliging a reasonable creature to do those things which *ex se* are necessarily fitting to a rational nature, and to omit what is unfitting to the same.

(2) Positive is that which is enacted by any positive legislator,

either God or man, as a rule obliging a reasonable creature to do or to omit doing those things which *ex se* are not necessarily fitting or unfitting to a rational nature. Hence, what is forbidden by a positive law becomes evil because it is forbidden.

7. Positive law is divided into :

(1) Divine positive law, contained in the Old and New Testaments.

It is distinguished into :

(a) Mere divine positive law: *e.g.* that a confessor must be a priest.

(b) Divine positive law of nature: *e.g.* that God is to be worshipped.

(2) Human positive law, which is distinguished into :

(a) *Ius gentium*, either primary or secondary.

(b) Ecclesiastical law.

(c) Civil law.

## § 2. The Promulgation, Acceptation, and Obligation of Law

8. For law to bind, either *quoad culpam* or *quoad poenam*, it must be sufficiently promulgated. For as law is a rational precept, no one can be bound to obey it if it have not been sufficiently made known to him. Ignorance takes away the voluntary ; and where there is nothing voluntary there can be no fault or punishment.

9. For sufficient promulgation, the law must be published in such a way that it can come to the notice of the community, although it be not brought specially and singly before the notice of individuals.

10. Pontifical laws and apostolic constitutions begin to oblige, so far as is *ex se*, the whole world as soon as they have been solemnly promulgated in Rome and come to the knowledge of others. It is not necessary that they should be promulgated in every province or diocese unless such is stated in the laws themselves.

11. Intrinsically, a law does not require acceptance before it begins to bind. Hence a just law obliges by its own inherent power, and subjects sin if, without a reasonable cause, they refuse to accept a law.

12. If a law be not accepted nor observed, and the lawgiver know and keep silence, although those sinned who, without a reasonable cause, did not accept it, yet they and others do not sin from the time when they know that the lawgiver both knew and kept silent ; because they can then reasonably conclude therefrom

*Cf. Rom.*  
*xiii. 1, 2 ;*  
*and Prop.*  
*damn.*  
*n. 28 ;*  
*Alexander*  
*VII. 24*  
*Sept. 1665*

that the law itself is revoked, since, though able, the lawgiver does not insist upon its acceptation and observance. But if he do not know of the non-acceptance or the non-observance of the law, its obligatory force remains for the space of ten years, after which prescription obtains against it, and it binds no longer.

13. In doubts whether a law have been accepted or not, the presumption is in favour of the law, which must be observed, for it is in possession. But some canonists deny this in case of a law merely penal.

14. In doubts whether a superior have the power of passing any particular law, it should be observed, for the superior is in possession.

15. In doubts whether a law be just or unjust, it should be accepted and observed; for, again, the superior is in possession, and subjects are bound to observe all such precepts which are not certainly unjust and evil.

16. If there be a reasonable cause for not accepting a law promulgated by the Pope, recourse, by way of petition, may be made to him for a remedy. If the law be passed by an inferior legislator, an appeal against it can be made to a superior authority. During the recourse or during the appeal, it is lawful to suspend the obligation of the law if there be such a use and practice. If the lawgiver, after hearing the petition, or the superior authority after considering the appeal, keep silence and no longer insist upon the observance of the law, he can be considered to have assented to the petition or appeal; and thereby revoked the law. But it must be clear that his silence is not that of rejection or wrath.

17. As regards the obligation of just human laws, whether they be ecclesiastical or civil, it must be noted that there are some which bind in conscience, and others which merely bind by punishment.

18. The punishments of these latter are of two kinds:

(1) *Latae sententiae*, which fixes a certain punishment to be incurred by the mere commission of the transgression as soon as the fact has been juridically proved.

(2) *Sententiae ferendae*, which decrees a punishment, but leaves the kind and amount to the judge.

19. A punishment decreed by law is *sententiae ferendae* in the following cases:

(1) When there are doubts as to the punishment itself.

(2) When the law only threatens, unless its wording makes it clear that the punishment is *lata*.

(3) When the law uses the future tense.

(4) When it uses the imperative mood as regards the action of the judge, and not as immediately regards the punishment.

20. A punishment decreed by law is *lata sententia* in the following cases :

(1) If the law use the imperative mood as immediately regards the punishment : *e.g.* let him be excommunicated.

(2) If the law use words which admit of no delay : *e.g.* *Mox, statim, illico, ex tunc, ipso facto.*

(3) If the law use such phrases as : *Excommunicamus, suspendimus, interdicimus ; sciat se esse excommunicatum, noverit suspensionem se incurrere.*

21. The law decreeing a punishment *sententiae ferendae* does not bind before the sentence of the judge is pronounced.

22. The law decreeing a punishment *latae sententiae* obliges in conscience before the declaratory sentence in those matters which do not require any external execution. For it is highly expedient that the Church should be able to make use of punishments which bind in the internal *forum* on account of sins which are not public.

23. But a law merely penal *latae sententiae* does not bind before the declaratory sentence in matters which require external execution unless in a specified case there be added the clause : *Alia etiam declaratione non secuta.*

24. An episcopal law enacted out of synod, but after hearing the chapter, most probably continues in effect after the death of the maker.

### § 3. *Those bound by the Law.*

25. The common ecclesiastical laws *per se* bind all the faithful.

26. Particular laws do not bind pilgrims and strangers living away from their own territory.

### § 4. *The Cessation of the Law*

27. Human law ceases in the following ways :

(1) By the cessation of the final cause.

(2) By abrogation : that is, when the law is wholly taken away.

(3) By *epicheia* (*q.v.*).

(4) By dispensation (*q.v.*).

(5) By a contrary custom (*q.v.*).

(6) By derogation : that is, when the law is in part taken away.

(7) By irritation, when the law passed by an inferior is rescinded by a superior authority.



28. The legislator himself, his successor in office, or his superior can abrogate a law.

29. A new law, that is directly contrary to an old law, takes it away even if there be no special mention of it.

30. A new law generally enacted does not take away or revoke reasonable customs.

31. Laws are not to be changed or abrogated without grave or just cause.

32. A law can cease by a true interpretation, i.e. *epicheia*. See REGULAE IURIS, WORDS, &c.

## LEGACY

1. Legacies *ad pias causas* are bequests by will of personal property for religious or charitable uses.

Lib. iv.  
n. 931,  
qu. 2

2. St. Liguori holds as the more probable opinion that bishops cannot use legacies for other purposes than those specified in the will. The Pope alone can for just causes change these wills.

3. It is decreed in the Second Westminster Council :

viii. 1, 2

‘The administrators or guardians [*of them*], whether ecclesiastics or laymen, are to be deemed dispensers of them and as having to render an account to God. . . . Effort must be made in every way to determine (if there be any doubt) the intention and mind of the donor or testator of each fund, and that the proceeds of it may be most accurately applied to the use prescribed by him.’

4. Bishops are by canon law the executors of all pious legacies ; they should, therefore, see to the exact performance of the terms of the bequest.

## LEGATE

1. ‘Legates’ are persons appointed or sent by the Holy See to different countries or parts of the Christian world for the purpose of representing and acting for the Pope in the exercise of papal jurisdiction or in another capacity.

2. Legates are of three kinds :

(1) Legates *a latere* are cardinals sent from the side of the Pope ; if others are sent with similar powers, they are not called legates *a latere*, but legates with the powers of a legate *a latere*.

(2) *Legates missi* are prelates of archiepiscopal or episcopal rank, and they are of four classes :

(a) Nuncios, who are sent to reside permanently at the Courts of sovereign rulers in Europe.

(b) Internuncios, if they reside elsewhere or act only provisionally.

(c) Delegates Apostolic, who are sent to rulers outside of Europe. All these have primarily a diplomatic mission ; but they have also pontifical jurisdiction over the episcopate, clergy, and laity of the country.

(d) There is also another class of delegates apostolic (*q.v.*) who have no diplomatic mission, and are not accredited to any Court, but are solely charged with the exercise of papal jurisdiction.

(3) *Legates nati* no longer exist, except as a title in certain cases. They were local prelates who had joined to their other territorial jurisdiction a peculiar power as legates by right of their see. Thus the Archbishop of Canterbury was *legatus natus*.

3. All legates have ordinary jurisdiction in the place of their legation ; and their powers do not die with the Pope, for they are legates of the Holy See, which never dies.

4. *Legates a latere* have within their provinces full and ample power to exercise, in the name and stead of the Pope, the same jurisdiction as he himself exercises. Consequently it is immediate, not merely appellate, except in cases mentioned by the Council of Trent. Among their privileges are the following :

Sess. xxiv.  
c. 20,  
d. r.

(1) When they are present the jurisdiction of all other apostolic envoys is suspended for the time being.

(2) They have ordinary jurisdiction over regulars otherwise exempted.

(3) They can confirm the election of archbishops, bishops, and regular prelates, unless this has been specially reserved to the Pope. But they cannot unite or divide dioceses, translate bishops or depose them.

(4) They have concurrent jurisdiction with every bishop in their province in granting dispensation, absolving from censures, and solemnising marriages ; also in appointing to parishes, benefices, and other ecclesiastical offices and dignities.

(5) They can in their province do everything that a bishop can do in his diocese, excepting what may be expressly withheld from him by the Pope or the canon law.

(6) They can enact permanent statutes for their province and can summon provincial or national councils.

(7) They are charged with the supreme inspection and direction of ecclesiastical affairs in regard to the ecclesiastical affairs of their provinces, and can reform, correct, punish all and every person. They are the ordinary and judge of all.

5. A legate's powers cease :

- (1) By his death.
- (2) By the expiration of a time fixed for his legation.
- (3) By leaving his province with the intent of not returning.
- (4) By revocation on the part of the Pope.

See APOSTOLIC DELEGATE.

## LIBEL

1. A libel is a short writing containing clearly the plaintiff's petition and the cause thereof. It is the introduction of a cause.

2. It is presented to the judge so that he may see whether he have competency in the case and whether the cause is to be admitted or refused if it be evidently false or unjust.

3. The plaintiff in his own name shortly and clearly states the facts of his case and his claim against the defendant, whose name also must be clearly stated. The *quid* and the *quantum* must be made certain and distinct.

4. It is usual to add a claim to the libel that the plaintiff does not wish by this declaration to prejudice his cause if on trial something else in his favour is also proved.

5. By the narration of the fact the cause of the plaint should be clearly shown and the proofs upon which it depends. If the judge admit the libel he sends a citation (*q.v.*) to the accused.

6. The effects of a libel are as follows :

(1) The immediate and direct effect is to implore the ministry of the judge to try the case. The mere presentation of a libel leaves the cause whole ; hence before the judge issues the citation the plaintiff can withdraw it, change it, or correct it in the non-substantial parts.

(2) After the citation is issued there can be no substantial correction or change unless all expenses incurred by the citation be refunded ; there can be no change in the libel after the contestation (*q.v.*).

(3) It gives the form to the sentence (*q.v.*), which should be either for or against the libel.

## LIBER STATUS ANIMARUM

1. The First Westminster Council prescribed that whosoever xxv. n. 2  
is set over a congregation 'should go through the whole extent of the district under his pastoral care, in case this has not been already done, and write an exact relation of it and make out a *liber status animarum* in the manner prescribed in the Roman Ritual as far as circumstances will permit. Let him keep accurately registers of baptisms, of confirmations, of deaths and of marriages.'

2. The Fourth Westminster Council decreed :

'At every mission there should be a chest or place for the x. 10  
archives (*q.v.*) of sufficient size and security, and in it should be kept all the books and other documents relating to the mission. In accordance with the First Westminster Council, books of those baptized should be kept as carefully as possible and preserved, note being made of the conditional baptisms; likewise of those confirmed and of the dead, and of those married, and, if possible, there should also be a book of the burials. The rector of the church . . . will have to bear the responsibility of filling up the books &c.'

## LICENCE

*See FACULTY*

## LIMINA APOSTOLORUM

1. Bishops in their consecration oath swear that they will personally at stated intervals visit the threshold of the Apostles—that is, they will present themselves before the Pope as the head of the Church and will report to him the state of their dioceses.

*Cf. Sixtus V. Constit. Romanus Pontifex, 20 Dec. 1585; Benedict XIV. Constit. Quod sancta, 23 Nov. 1740*

2. As to the manner in which this visit is made the following must be noted :

(1) If the bishop have a coadjutor, either he or his coadjutor in his name makes the visit.

(2) If legitimately hindered the bishop can satisfy his obligation by a procurator under two conditions, viz. :

(a) That he be instructed by a special mandate.

(b) That he be sent from the diocese, though even this is dispensable for just reasons.

Benedict  
XIV. *De*  
*Synodo*,  
xiii. c. 6

*Collec-*  
*tanea*,  
S.C.P.F.  
n. 82

Pius IX.  
1 Sept.  
1876

(3) The procurator must, as a rule, be a secular ; a regular is only allowed when there is a proved deficiency of secular clergy. But the S.C.P.F. is lenient in this matter if there be a just cause.

(4) Titular bishops residing as vicars-apostolic amongst the infidels can fulfil the precept by means of a procurator living in Rome specially deputed for each occasion.

3. As to the time when this visit is made, the periods vary according to the distance of countries from Rome. Thus :

(1) In England and Scotland the visit has to be made every four years.

(2) In Ireland every five years.

(3) In Canada, the United States, Australia, India, every ten years.

The periods, whether of three, four, five, or ten years, whether for old or new sees, are to be counted, not from the date of election or the taking possession of the see, but from the day when Sixtus V. published his decree, *i.e.* from the 20 December, 1585. If a bishop, for just causes, asks the S.C.P.F. to prolong the time the request will be granted.

(4) The visit should be made in the last year of the period.

4. At the death of a bishop, who for any reason has not paid his visit *ad limina* by reason of the prescribed time not having elapsed, the duty descends to and devolves upon his successor in such a way that, as soon as the period implied in his predecessor's oath is completed, he is bound to make the visit due. This does not mean that the succeeding bishop is bound to make up all the periodical visits that his predecessor failed to make, but that a newly consecrated bishop is bound to pay the visit during the current period if his predecessor have failed to do so. On the other hand, if anyone have taken charge of a diocese a short while before the period begun by his predecessor has come to an end, since by reason of the shortness of the time he cannot as yet have ready what is required to give an account of the state of his church, the remedy of asking for a delay comes in ; and this, particularly under such circumstances, is easily obtained from the Holy See.

5. The more usual and valid impediments that exempt bishops from the personal journey to Rome are :

(1) Duties and office of State combined with the bishopric.

(2) Old age.

(3) Sickness.

(4) Pestilence.

(5) War.

Benedict XIII. in his synod of 1725 warns bishops 'not easily to dispense themselves from this personal visit, since by the intercession of the same holy princes of the Church and the word of the living voice of the Supreme Pontiff they will here receive many and profitable suggestions which cannot at times be committed to writing.'

Instruc-  
tion,  
S.C.P.F.  
1 June,  
1877, Col-  
lectanea,  
n. 110 /

6. The visit *ad limina* comprises three acts :

(1) The personal visit to the Pope and an oral report of the state of the diocese.

(2) The visit to the basilicas of St. Peter and St. Paul and prayer at the tombs of the Apostles.

(3) The presentation of the written report to the S.C.P.F.

7. The penalties for not observing the law of the visit *ad limina* are as follows :

(1) Interdict from entering church.

(2) Suspension from office and benefice until purged of contumacy.

8. In order that the Holy See should be provided with a due account of the state of each church, the S.C.P.F. has issued the following list of questions, the answers to which form the basis of each report :

(1) State the name, age, and country of the bishop ; and, if a regular, to what religious institute does he belong ?

(2) The size and character of the diocese.

(3) The province in which it is situated or the number of provinces it contains.

(4) If it be an archiepiscopal church, the number and character of its suffragans ; but, if an episcopal church, the name of the archbishop.

(5) Has the bishop a cathedral and dwelling of his own, and in what city ?

(6) Has he any special faculties from the Holy See ; if so, what are they ?

(7) Has he any property of his own ? To what amount, and of what kind ?

(8) Enumerate the missions of the diocese and their distance from one another.

(9) When was the visitation of the diocese completed, and was it conducted according to canon law ?

(10) When were provincial or diocesan synods held ?

(11) Has there been any unpleasantness with neighbouring bishops with respect to the exercise of jurisdiction ?

D D

(12) Has the bishop a chapter, and how many canons are there ?

(13) Are there any prebends, and what are they ?

(14) What amount of service do the canons render to the cathedral ; and do they likewise discharge the duty of parish priests in parts of the diocese ?

(15) Do they reside in their parishes ?

(16) Do they mix themselves up with the government of the church and hinder the free exercise of the bishop's jurisdiction ?

(17) Is there a seminary, and where ? How many young men are there in it, and what is their course of studies ?

(18) Are the regulations of the Council of Trent as to seminaries observed ?

(19) Are there parish priests in the diocese or merely missionaries ?

(20) Are the parish priests for life or removeable at the bishop's will, and do they say mass *pro populo* on feast days ?

(21) Are they selected by the bishop ?

(22) How many parishes are there ? Is the Blessed Sacrament kept in them, and in what manner ?

(23) Have they fixed boundaries and a church of their own ? And how many chapels are there in each parochial district ?

(24) Are any of the parishes in the hands of religious orders ? Which are they ?

(25) Have the parish priests assistants to help them in the cure of souls ?

(26) State the number and position of the Catholics dwelling in each place.

(27) Are there Catholic schools, and how many ? What number of children are educated in them ?

(28) Is Christian doctrine, free from all error, taught therein in the vernacular, and to what extent does an opposite state of things exist ?

(29) Are there any non-Catholic schools, and how many ? How many Catholics frequent them ?

(30) State the number of native priests and of aliens.

(31) Likewise the country, character, duties to which they apply themselves, and of what use may they be in the service of the Church.

(32) Have priests of this kind faculties from the Holy See ? And at whose expense do they live ?

(33) Are there any students of the S.C.P.F. amongst them ? Who are they, and do they discharge their duties ?

(34) State also the name, age, and character of any native priests who are outside the diocese; likewise let the places be mentioned where they are staying; what they are doing there; and are they in any particular way bound to serve their own church?

(35) Are there also any clerics of this kind, and how many? How, and upon what title, are they ordained? Where do they dwell? And what is required of them before they can be promoted to holy orders?

(36) Are there any regular missionaries? How many? Of what order and country?

(37) Are certain districts given up to any order, and by what authority?

(38) Where do they dwell? Under what superiors? And how many houses have they?

(39) Have they duly appointed convents, or simply hospices? Is enclosure kept in them?

(40) Do they live in community and with regular observance, or do they dwell alone and in private houses with seculars; and especially with women?

(41) How do they dress?

(42) Do they admit natives of the diocese to the habit and to profession; and by what authority?

(43) Have the regulars any special faculties? And do they exhibit these to the bishop before using them?

(44) In what respects do they depend on the bishop?

(45) In what way are they supported? Do they take anything for the administration of the sacraments? And what is their repute?

(46) In what way do they do useful work for the salvation of souls and the increase of religion?

(47) Is there any convent of nuns? Of what institute? By what authority founded? Under whose care and ministry is it?

(48) Is community life kept therein? And are the nuns bound by solemn vows of poverty, chastity, obedience, and the enclosure?

(49) Are there in the diocese any pious foundations or pious legacies?

(50) Are the proceeds of such bequests properly administered and the canons relating to such matters observed?

(51) Enumerate all the several abuses which by chance may have sprung up, even among Catholics, whether as to faith and



rites, or concerning morals, or the administration of the sacraments, preaching of the divine word, or of any other kind.

(52) Explain the principal causes of these abuses and how they may be eradicated.

(53) Are marriages properly contracted ?

(54) Has the state of the Catholic faith increased or decreased, say, for the last twenty years ; and what is the cause ?

(55) Finally let him carefully weigh the spiritual needs of Christianity in his diocese ; clearly state them ; and propose suitable means for erasing past mistakes and for furthering the greater progress of religion.

S.C.P.F.  
Collec-  
tanea,  
104 ; cf.  
also n. 109

### MANIFESTATION OF CONSCIENCE

1. Manifestation of conscience is a custom, introduced by new orders, of requiring their subjects at stated intervals to open, outside of the sacrament of Penance, the state of their souls to the superior for the purpose of advice &c.

2. Leo XIII. by a decree *Quemadmodum* of the S.C.E.R. dated 17 December, 1890, abolished the compulsory manifestation of conscience in all congregations of women and of laymen. The words of this decree are : ‘ His Holiness annuls, abrogates, and declares of no force whatever hereafter all regulations whatsoever in the constitutions of pious societies and institutes of women who emit either simple or solemn vows, as well as in those of men of the purely lay order (even though the said Constitutions should have received from the Holy See approbation in whatsoever form, even that which is termed most special), in this one point, in which these Constitutions regard the secret manifestation of conscience in whatsoever manner or under whatsoever name. He therefore seriously enjoins on all the superiors, male and female, of such institutes, congregations, and societies absolutely to cancel and expunge altogether from their respective constitutions, directories, and manuals all the aforesaid regulations.’

3. Although nothing is said here about the manifestation which is practised in some of the newer sacerdotal societies and congregations, the mind of the Holy See seems to be clear ; for the custom of requiring from subjects a disclosure of conscience outside of the sacrament of Penance seems to be as liable in such religious bodies ‘ to be as misused and perverted to purposes opposed and foreign to ’ its approved nature as it was in the institutes of pious

women. The S.C.E.R. has removed out of the constitutions of a congregation of priests the article prescribing the manifestation of conscience outside of the confession.

4. To prevent this decree becoming a dead letter the Pope forbids—

‘such superiors, male and female, no matter what may be their rank and eminence, from endeavouring, directly or indirectly, by command, counsel, fear, threats, or blandishments, to induce their subjects to make to them any such manifestation of conscience; and he commands these subjects, on their part, to denounce to the higher superiors such as dare to induce them to make such a manifestation; and, if the guilty one be the superior-general, the denunciation should be made by them to this Sacred Congregation.’

5. The Holy Father did not wish to interfere with the liberty of the subject who may desire to have advice from an experienced and trusted superior. The evil aimed at is the compulsory manifestation and the abuses therefrom arising. The decree says :

‘This, however, in no wise hinders subjects from freely and of their own accord opening their hearts to their superiors, for the purpose of obtaining counsel and directions in doubts and perplexities, in order to obtain aid for acquiring virtues and advancing in perfection.’

6. So that all may know of this prohibition the Pope ‘commands that copies of this present decree, translated into the vernacular, should be inserted in the Constitutions of the said pious institutes; and that at least once a year, at a stated time, this decree shall be read in a loud and intelligible voice in each house, either in the public refectory or in chapter assembled for this special purpose.’

## MASS

1. The Church has surrounded the celebration of the Divine Sacrifice with many laws for ensuring due reverence for this most holy rite. As most of these form part of the ceremonial legislation or of the moral ruling of the Church, they do not enter directly into the scope of this work. But certain points are regulated by canon law and require attention in the following sections :

### § 1. *The Application of the Mass*

Benedict  
XIV.  
Constit.  
*In superi-*  
*riori*,  
18 March,  
1755, § 27

2. The Sacrifice can be offered for all, except those for whom the Church forbids it to be offered : these are those only who are excommunicated. Hence it can be offered not only for the faithful in the Church militant, but also for infidels, for the souls in purgatory, and in thanksgiving for the blessed in heaven.

3. As regards non-Catholics a distinction is to be made between the living and the dead ; and also between solemn masses and private masses.

*Cf.* De-  
cretum,  
S.C.S.U.I.  
Feria IV.  
19 April,  
1837; and  
21 July,  
1865

(1) Private masses for the conversion of non-Catholics can be lawfully celebrated, and alms can also be received for this intention.

(2) Solemn masses are allowed for reigning princes because they are offered for the actual ruler and for the prosperity of the commonwealth.

(3) But solemn masses for a deceased non-Catholic, even if the sovereign, cannot be offered. Gregory XVI. declared in 1842 : 'It is forbidden by the old and the new discipline of the Church to honour with Catholic rites those who have died in notorious and external profession of heresy.'

(4) Private masses, if without causing scandal, can, however, be said for those non-Catholics who have died with manifest signs of penitence, together with the desire of embracing the Catholic faith. It would seem also that the implicit desire may be held, in such cases, to be sufficient.

(5) Mass can be lawfully offered for deceased catechumens.

4. As regards the application of the mass *ratione stipendii* see the article on the MASS HONORARIUM. See also MASS 'pro Grege.'

### § 2. *The Iteration of the Mass*

Innocent  
III. cap.  
*Con-*  
*sulisti*

5. By the canon law a priest is only allowed to celebrate once in the day except on Christmas Day.

6. But faculties are given to missionaries and to others, when necessary, to say two masses.

7. The S.C.P.F. by an Instruction dated 24 May, 1870, has regulated the exercise of this faculty :

(1) The faculty is given by the Holy See to the ordinaries with the power to extend the same to missionaries.

(2) The permission is to say only two masses, notwithstanding the greatness of the need for celebrating a larger number.

(3) Necessity is the only title which authorises priests to say two masses, and this necessity must be determined not by taking into account the poverty of priests, but the spiritual needs of the people and the scarcity of priests.

(4) The necessity does not extend to suppressed feasts, for then there is no obligation of hearing mass.

(5) It is likewise forbidden to duplicate for the convenience of persons who might wish to fulfil the precept of mass in their private chapels.

(6) Custom is not a sufficient reason for one and the same priest to offer up twice on one day the holy Sacrifice.

(7) The poverty of priests does not justify duplication. The S.C.P.F. decreed 7 March, 1743, and 28 July, 1750: 'Let priests be seriously warned against abusing the faculty of celebrating twice in the day in order to receive a more abundant and ample stipend,' and Benedict XIV. Constit. *Apostolicum ministerium* 30 May, 1753, styles, 'an intolerable abuse' the practice of giving the faculty of duplication 'to the end that, by a double alms, the priest may live more becomingly.'

(8) The S.C.C. declared, 28 September, 1858: 'By general custom priests are not allowed to take an alms for the second mass even when there is a question of those who, having the charge of a parish, cannot take any stipend for their first mass, seeing that they are bound to apply this *pro grege*. But Pius IX. S.C.P.F. 15 October, 1863, granted the ordinaries of missions for just and grave causes to allow their priests to receive a stipend also for the second mass.

*Collectanea*,  
S.C.P.F.  
n. 887

(9) A priest is forbidden to say mass twice whenever another priest can be had by means of whom the necessity, so far as the people are concerned, can be obviated. In such a case the parish priest is bound to give a stipend to the other priest; should he be unable to do it, the people are so bound; or, if by poverty they cannot, the ordinary would have to supply it.

(10) Duplication is allowed to a priest 'who has two parishes or two sets of people, so far apart that one or other cannot by any means, by reason of the very great distance, hear their parish priest's mass on feast days.' Also, 'when there is but one church in which mass is celebrated and all the people cannot get into it together.' In these cases a priest can duplicate without the faculty in the Formula granted by Propaganda, the canon law itself allowing it: always, however, dependently upon the ordinary, to whom it belongs to judge whether there be a real necessity as

*Dr. Synodo*, VI.  
cap. viii.  
n. 2

well as in reference to the possibility of applying one of the canonical remedies. Benedict XIV. holds that in the case of a parish priest with two parishes he is not only able, but bound to celebrate mass twice on the same day.

(11) The indult of the Formula given by S.C.P.F. is not restricted to the needs of the people on feast days, but, being in general terms, it contemplates also the other cases in question, such as the necessity for administering the Viaticum to the sick in two parishes.

Benedict  
XIV.  
Constit.  
*Apostoli-  
cum  
ministe-  
rium*

(12) Use can be made of the faculty 'when the number of those who are bound to assist at mass on feast days shows such a necessity that unless power be given to some priest to celebrate two masses on the same day *several* would not fulfil the precept of the Church.' The number of persons contained in the term *several* is left to the prudence and conscience of the bishop, who is bidden to lay aside all anxiety and not to be disturbed at the strictness of the terms. The necessity is to be a real one; but an absolute one is not required, a moral necessity being sufficient. Circumstances must always be taken into consideration in estimating the necessity. The clauses in the Formula 'must not be interpreted in the most rigorous manner, having always in view that the Apostolic See grants the said faculty for the spiritual advantage of the faithful in its desire that all should have the convenience of fulfilling the ecclesiastical precept.'

### § 3. *The Place, Time, and Mode of Celebration*

Trent,  
Sess. xxii.  
*De Obs. in  
Celebr.  
Missae*  
Benedict  
XIV.  
*Instr.* 13

8. Mass can be said in churches or in public oratories, consecrated or blessed, unless a case of great necessity intervenes.

9. The time for saying mass is between dawn and noon: a third of an hour either way is allowed. The following exceptions are recognised:

(1) It is lawful on account of a journey to celebrate one hour before or one hour after the usual limits.

(2) If the Viaticum have to be given, mass can be said at midnight.

(3) The Sacrifice can be offered two hours after noon lest the people should be deprived of mass on a feast day.

Sess. xxii.

10. The Council of Trent forbids bishops to allow unknown and vagabond priests to say mass in their dioceses; or to permit mass to be celebrated by any priest, secular or regular, in private houses or outside of approved churches or chapels.

11. The rubrics of the Roman Missal are to be observed. They are of two kinds :

(1) Preceptive, which contain something which, *ex iure* or by lawful custom, is conveniently prescribed in the celebration itself.

(2) Directive, which concern what has to be done before or after the mass.

#### § 4. *The Parochial Mass*

12. The Council of Trent exhorts bishops to admonish their people to repair frequently to their own parish churches, at least on Sundays and holy days. Sess. xxii.

#### § 5. *The Necessity of celebrating*

13. If a priest *ratione officii* has to say mass the question of justice enters into consideration.

14. If he hold no office, he is bound, *ratione sacerdotii*, to celebrate three or four times in the year, according to the more common opinion. The S.C.C. in 1696 declared that the bishop can punish a priest who, without a just cause, does not celebrate three or four times in the year. Cf. Monacelli, Pars Prima, tit. 5, form. 9, n. 15

15. The First Council of Westminster decreed :

(1) 'Whatever is dedicated to the service of this most divine Sacrament and of the unbloody Sacrifice, altars, sacred vessels, sacred furniture, all, if not splendid and costly, should be at least neat, clean, and becoming. The priest when saying mass should allow nothing that is torn, soiled, or less precious than it ought to be. If possible, the chalice and the pyx should have, at least, the cup of silver, and gilt inside ; the same is likewise to be said of the paten. The sacred vestments must be made of silk, the other vestments and altar-clothes only of linen. That in truth uniformity in these things may prevail is to be aimed at, that the form of the sacred vestments should be accommodated to the use of the Roman Church. xviii. n. 1

(2) 'It were desirable that mass should be said by all priests every day ; however, they should, at least, frequently receive at the altar Christ, Who may renew youth in grace ; and let them announce to the faithful the days and hours when mass will be said in the church during the week. Ibid. n. 2

(3) 'On Sundays and festivals let the mass be celebrated in a more solemn manner as far as possible. But let the rubrics be observed exactly, especially when mass be sung without the Ibid. n. 3

sacred ministers. For it is not lawful to change at pleasure the use of this kind ; but let all be done according to order and in a uniform way.

*Ibid.* n. 18 (4) ' Let no priest, at the risk of incurring the penalties set down in Law, presume to celebrate mass twice in the day (except on the Feast of the Holy Nativity) unless he obtain in writing permission from the bishop or his vicar, empowered to grant it by apostolic delegation.

*Ibid.* n. 19 (5) ' Likewise let the rubrics of the Roman Missal and of the little Ritual of Benedict XIII. be observed strictly, as far as may be, during the last three days of Holy Week, so that only one mass be celebrated in each church on Maundy Thursday and Holy Saturday. Nor on this day may mass be celebrated, unless with the whole office (with the sole exception of the blessing of the font in a church where there is no font), nor can any part be omitted at pleasure.

*Ibid.* n. 20 (6) ' Finally priests should remember that the infinite value of this Sacrament and Sacrifice consists in the presence of our Lord Jesus Christ, not in the display of external worship ; consequently it is better to give the faithful a simple low mass than to attempt, beyond one's capabilities, a more solemn rite with ceremonies often sadly mutilated and with wretched music more likely to drive away than to excite devotion. Therefore let the singing, especially at Mass and Benediction, be grave and devout, so that the faithful, listening to it, at one time may be moved to tears with Augustine, at another time with the choirs of angels sing a canticle of praise to God and to the Lamb with great joy. Let the children also be taught music in school in order to exclude from the churches women singers in the choirs, especially those who sing for hire. Thus, by degrees, there will be heard what we so much desire, the whole congregation singing with one voice and heart. The singing should not be protracted so as to stop the mass in places where the rubrics do not allow it.'

xxiii. n. 1 (7) ' It were much to be desired that the exact observance of feast days should prevail amongst us ; but since it is difficult, especially to those who are dependent on Protestant masters, to abstain from servile work, we must labour most earnestly that the faithful at least hear mass on those days if they fall within the week. And, therefore, missionaries ought, if possible, to take care that at least one mass be celebrated early to satisfy their devotion.

IV. West. xi. n. 2 (8) ' The priest should say mass at an appointed time.'

## MASS HONORARIUM

1. The mass *honorarium* is a lawful offering made by the faithful to the priest who says a mass for their special intention. The money given is not a salary or the price of the mass, which is infinite in value. It is an alms necessary for the support of the priest, and is one of the recognised means whereby those who serve the altar live by the altar. Those who desire to have the Sacrifice offered for their special intention should provide what is necessary for that sacrifice ; and this is done by the mass *honorarium*. The labourer is worthy of his hire.

2. The bishop in his diocese, as the delegate of the Apostolic See, can fix, according to the circumstances of times and places, the lawful amount which can be asked for as a mass *honorarium*. No priest, therefore, can demand more. The recognised *honorarium* for a low mass is less than that for a high mass, which entails extra expenses. Also the *honorarium* for a mass to be celebrated at an ordinary hour may naturally differ from that asked for a mass to be celebrated at an extraordinary hour. Hence a scale of fixed charges should be arranged by the bishop to meet all usual cases. While the diocesan law forbids a priest to require more than the authorised *honorarium*, he may not only accept more if it be freely offered, but also take less should the circumstances of the case require it ; but he must beware lest the semblance of charity be but a cloak.

3. While it is perfectly lawful to receive an *honorarium* for a mass, owing to the abuses to which the custom (like all customs) is liable, stringent legislation has been made by the Church to minimise the possibility of such abuses. Benedict XIV. praises St. Ignatius of Loyola for having forbidden the Society of Jesus to receive *honoraria* for masses.

4. A priest is bound to say as many masses as he has accepted *honoraria* ; and if he have received them under the conditions of saying them on certain days or at certain altars, or saying them personally, he is bound to observe these conditions, for they enter into the contract. The masses must be said for the intention, expressed or otherwise, of the giver of the alms.

5. If he be free to say the masses, either personally or by another, the whole of the alms received goes to the one who actually says the mass.

6. Books should be kept in every sacristy in which all masses



received should be noted with the date of acceptance and the date of fulfilment, also with the amount of the alms received.

7. No priest can receive two alms for one mass ; nor can he, if he have received an alms over and above the diocesan regulation *honorarium*, give the usual amount, with the obligation of saying the mass, to another priest, and keep the balance for his own use : unless the excess were given to him with the purpose of being a personal gift, charged with the obligation of saying a specified number of masses according to the diocesan regulation, for then the extra retribution is not given on account of the mass, but for reasons of friendship, gratitude, &c.

8. All manner of traffic in masses is forbidden by law ; and Pius IX., Constit. *Apostolicae Sedis* excommunicates, with reservation to the Pope, those who receive *honoraria* for masses at a high price, and who make a profit by having these masses celebrated in localities where the diocesan stipend is at a lower figure.

9. Priests allowed to duplicate are forbidden to receive an alms for their second mass. The S.C.P.F. decreed, 28 July, 1750 : ' Let priests be seriously warned against abusing the faculty of celebrating twice in the day in order to receive a more abundant and ample stipend.' And Benedict XIV. Constit. *Apostolicum ministerium*, 30 May, 1753, styles the practice of giving a priest the faculty of duplicating to the end that by double alms he may live more becomingly, ' an intolerable abuse.'

10. The latest legislation is contained in a decree S.C.C. dated 11 May, 1904, the principal points of which are as follows :

(1) After defining what are manual masses the S.C.C. declares that the time limit for saying one such mass should be a month ; for one hundred, six months ; and so on. No one can lawfully accept more masses than he can probably satisfy within a year from the date of acceptance unless the donor agree.

(2) The decree *Vigilanti* of 25 May, 1893, ordering that all holding benefices or administering pious works shall send to the ordinary at the end of the year all the masses which have not been satisfied, refers to foundation masses, which must be said within the year, and to manual masses, if in great number, which have been received for more than a year, saving the wishes of the donors.

(3) Anyone who has a number of masses which are not foundation masses, nor to be said at a particular time or place, can give them to any worthy priests personally known to himself.

(4) Those who send masses with the alms to their ordinary or to the Holy See are thereby relieved before God and the Church

of all obligation. But those who give masses received by themselves to others are bound by the obligation until they have received the assurance of the due fulfilment. Hence, should the priest, to whom the obligation was transferred, die or the money be lost, the obligation rests on the one who first received it. Bishops who receive such masses should at once enter them into a book and see that they are celebrated as soon as possible, manual masses coming first. The alms can be distributed to any personally known priests, or can be sent to the Holy See or to other ordinaries.

(5) It is strictly forbidden to give the obligation and alms of masses to booksellers, publishers of papers, and magazines, even if they be religious men; to the sellers of sacred vessels and vestments, even if they belong to some pious and religious institute; nor to anyone, even ecclesiastics, who want masses, for any object no matter how good it may be, except that the masses are celebrated either by themselves, or by other priests their subjects. For such giving is trafficking with the alms of masses, and lessens the amount of the alms themselves. This is to be understood of manual masses, of foundation masses, and of masses annexed to benefices. The alms can never be separated from the mass, nor changed for other things nor lessened; it is to be given wholly and *in specie sua* to the celebrant. Hence to buy or sell books, sacred vessels, or anything else, or to subscribe for periodicals by means of masses, said or to be said, is wholly forbidden. It is not lawful at celebrated sanctuaries to deduct anything from the alms offered by the faithful under pretext of the work of the sanctuary itself unless a new and special leave be had from the Holy See, and this will only be granted for a proved necessity and with fitting and opportune guarantees.

(6) Those who infringe in any way or under any pretext the regulations contained in the above paragraph incur *ipso facto*, if a priest, suspension *a divinis* reserved to the Holy See; if not yet a priest, suspension from the orders received and inability to ascend to higher orders; if a layman, excommunication *latae sententiae* reserved to the bishop.

(7) In cases of masses annexed to benefices, when these are given to other priests to be celebrated, the *honorarium* must be that of the diocese. In foundations the alms is to be that provided by the foundation itself, saving the lawful rights of rectors and fabrics.

S.C.C.  
25 July,  
1824;  
and 21  
Jan. 1898

#### 11. The Councils of Westminster decree :

(1) 'The rectors of churches of the secular clergy should bear in mind that the bishop alone has the right to fix upon churches

IV. x. 11

the obligation of masses, whether they be temporary or perpetual ; and the obligations already imposed cannot be changed or lessened without consulting the Holy See.

I. xxv. 5 (2) The priest 'should examine carefully into the obligations of masses, and have a list of them hung up in the sacristy ; but no new obligations should be accepted without the consent of the bishop.

II. viii. 14 (3) 'Retributions for masses are the property of the priest.'

n. 68 12. The Maynooth Synod (1872) states that Pius IX. granted leave to the bishops of Ireland, for just and grave causes, to allow their priests to take alms for each mass when duplicating.

### MASS 'PRO GREGE'

*Cf. Trent, Sess. xxiii. cap. 1, d.r.; Benedict XIV. Constit. Cum semper, 19 August, 1744; S.C.C. 25 Sept. 1847* 1. Diocesan bishops and parish priests are bound to offer the Holy Sacrifice on Sundays and feasts of obligation for the flocks committed to their care. No contrary custom prevails against this law even in cases where the parish priest has no fitting income.

2. Pius IX., *Encyc. Amantissimi Redemptoris* (3 May, 1858), and (as regards bishops) Leo XIII., *Constit. In suprema*, 10 June, 1882, decreed that all parish priests and also all who have cure of souls ought to offer and apply the most holy Sacrifice of the mass for the people confided to them, not only on all the Sundays and other days upon which the observance of the precept still obliges, but also on the days which the Holy See has consented to withdraw from the number of the feasts of obligation &c.

3. Hence not only parish priests, but parochial vicars, administrators of vacant parishes, and *curati ad nutum amovibiles*.

4. The priest who has charge of two parishes must say two masses *pro grege*. If he duplicate in one church, he is not allowed to receive a *honorarium* for the second mass.

S.C.C. 25 Sept. 1847. *Cf. Bouix, De Parocho*, p. 590 5. The duty is personal, and cannot be performed by another except in case of sickness or the obligation of celebrating the conventual mass. No contrary custom can prevail against this personal obligation.

*Collec-tanea*, n. 93; also Decree, S.C.P.F. 18 Aug. 1866; *Col-lectanea*, n. 205 6. In countries where the hierarchy is not established the S.C.P.F. decreed (16 January, 1803) that the vicars apostolic and missionaries were not bound to the mass *pro grege* ; but it was fitting that they applied it *ex charitate*.

7. It was decided in 1866 that in England only the bishops are bound to the mass *pro grege*, as there are no canonical parish priests.

## MATRIMONIAL CAUSES

The Fourth Council of Westminster decreed :

‘Notwithstanding all the decrees, whether generally in the law or specially made in our provincial and diocesan synods concerning matrimony, as difficulties sometimes, and even great scandals at times, are liable to arise, owing to the ignorance or rashness of those who deal with matrimonial causes, we think fit to make a few declarations, and to decree that they shall be faithfully observed.

1. ‘Questions as to the validity of marriages are called matrimonial causes ; and these belong solely to the external *forum* and are to be settled by the ordinary juridically. To the ordinary, therefore, recourse must be had when there is any question of the marriages of *vagi* and strangers ; any question as to contracting a new marriage whilst a doubt exists as to the validity of a marriage already contracted ; any question as to any doubts about the death of a spouse, or concerning the free state of those who wish to contract marriage : for to the ordinary does it belong to determine whether those who are called *vagi* are truly such, and to give them permission to contract matrimony ; it is for him to determine whether strangers who have come hither are sufficiently constituted under his jurisdiction whether by domicile (*q.v.*) or by *quasi*-domicile in the sense understood by the law or at least by the delegation (*q.v.*) of the ordinary of the contracting parties ; and in all other doubts, if any such remain, after careful inquiry, it is the ordinary’s duty alone to weigh them, and, if necessary, after instituting a judicial process, to pronounce judgment.

2. ‘But as regards marriages already contracted we most gravely admonish and command in the Lord all priests who have the cure of souls as soon as it is most certainly clear to them that some marriage is invalid to declare openly to all concerned that they have no authority to decide in such matters ; but that before they presume to proceed to a new marriage they must have recourse to the ordinary, and await his juridical sentence.

3. ‘Whenever in a matrimonial cause a judicial process as to the validity or nullity of the marriage is to be instituted, let it be instituted in legal fashion, and a *defensor matrimonii* (*q.v.*) be appointed ; and in order to this a *defensor matrimonii* shall be named at each diocesan synod, saving the bishop’s right, however, of changing him.

4. 'In dealing with matrimonial cases or causes, priests must be most exact and careful in inquiring into facts and circumstances, in collecting proofs and the necessary documents, and in preparing those who are about to marry to receive the grace of this sacrament. But whenever before the celebration of the marriage for any reason recourse has to be had to the ordinary, the matter should not be brought before him until all things connected with it are completed as far as possible. It is the ordinary's duty to give judgment upon a case when it has been carefully drawn up and fully exposed, and to grant permission or dispensation ; but by no means, either by himself, or by his officials, or by letters, or by examining the spouses, to inquire into the facts, exact proofs, or to get possession of documents.'

I. xxv.

II. viii.

n. 68

*Cf. T.*  
Sess. }  
cap. }  
Bene  
XIV  
stit.  
*sem*  
19 A.  
1744  
S.C.C  
Sept.

### MATRIMONIAL DISPENSATIONS

The Sacred Congregation of the Propagation of the Faith issued on 9 May, 1877, the following Instruction on matrimonial dispensations :

'As a dispensation is a relaxation of the common law granted by one who has the power, and with knowledge of the cause, it is clear to all that dispensations from matrimonial impediments must not be conceded except there be a lawful and grave cause. Moreover, everyone readily understands that the more grave the impediment in the way of marriage the more weighty must be the reason requisite for dispensation. Now supplicating letters for some dispensation of this kind not infrequently come to the Holy See, that are supported by no canonical reasons. It likewise sometimes happens that in petitions of this kind things are omitted which of necessity should be introduced lest the dispensation labour under the vice of nullity. It has therefore seemed opportune in this Instruction to go briefly through the chief grounds which have been usually deemed sufficient for obtaining matrimonial dispensations in accordance with canonical sanctions, and a prudent consideration for ecclesiastical requirements ; and thus to point out what must of necessity be expressed in the petition for the dispensation.

'And to begin with the grounds for dispensation, it will be worth while at the outset to observe that sometimes one reason taken by itself is not sufficient, but it may be so considered when coupled with another ; for those which avail not singly do

so when taken together. Grounds of this description are the following :

1. 'Smallness of place, either absolute or relative (as regards the female petitioner alone), seeing that in the place of her birth or even domicile a woman's relationship is so spread that she is unable to meet with anyone to be married to of an equal position with her own, save a relative by blood or by marriage, and to leave her country would be a hardship to her.

2. 'The advancing age of the woman : if, for instance, she is over twenty-four and has not hitherto met with anyone of her own position to whom she may be married. But this reason does not hold good in the case of a widow who wishes to marry again.

3. 'Deficiency or incompetency of dowry : if a woman have not actually a dowry large enough to enable her to marry another of her own position, unconnected by blood or marriage, in her own place of abode. And this reason becomes all the more weighty when the woman has no dowry at all, and a relative by blood or by marriage is ready to marry her or even to dower her *ex integro* as is suitable.

4. 'Contentions already arisen about inheritance of property, or serious or imminent danger of the same. If a woman have on hand an important suit in reference to her inheriting wealth of great moment, and there be no one else to undertake a contention of this kind and carry it on at his own expense, save him who wishes to marry her, a dispensation is usually granted ; for it benefits the commonweal that contentions should be ended. Closely allied to this is another reason, viz. that the dowry is in litigation, and the woman has no other through whose assistance she will be able to recover her property. A reason of this kind, however, suffices only in cases of the more remote degrees.

5. 'Poverty of a widow with a numerous family when some man promises to support her. But at times a widow obtains the remedy of a dispensation only on account of her youth and that she is in danger of incontinence.

6. 'The blessing of peace : under which head come not only treaties between realms and princes, but also the extinction of serious enmities, disturbances, and ill-will between citizens. This reason is brought forward either to extinguish serious enmities that have sprung up between the blood relatives or the connections of the contracting parties, and would be completely put an end to by the celebration of the marriage, or when serious quarrels have existed between the relatives and connections of the contracting

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parties ; and, though a beginning of amity has been made, yet the celebration of the nuptials would conduce greatly to the confirmation of the peace itself.

7. 'Too great, suspicious, dangerous familiarity, as well as cohabitation under the same roof which cannot be easily prevented.

8. 'Previous connection with a relative by blood, or marriage, or with another labouring under an impediment, and pregnancy, with consequent legitimation of the offspring, in order to provide for the well-being of the offspring and the good name of the mother, who would otherwise remain unmarried. This indeed is one of the more urgent causes on account of which dispensation is accustomed to be granted even to plebeians, provided that the connection did not take place under the hope of a more easy dispensation, which circumstance must be expressed in the petition.

9. 'Infamy of the woman, arising from a suspicion that through over-familiarity with a relative or connection she had been seduced by him, though the suspicion should be false, in a case when a serious injury would ensue or grave losses arise : a woman, seriously defamed, must either remain unmarried or marry beneath her.

Sess. xxv.  
c. 5, on  
Reform of  
Matri-  
mony

10. 'Revalidation of a marriage which has been contracted in good faith and publicly, in the way prescribed by the Council of Trent: because its dissolution could hardly be brought about without public scandal and heavy loss, especially on the woman's part. But if the parties have got married in bad faith, they by no means deserve the favour of a dispensation, as the Council of Trent regulates.

11. 'Danger of a mixed marriage or of its being celebrated before a non-Catholic minister. When there be danger that those wishing to contract marriage in one of the closer degrees, may go before a non-Catholic minister for the marriage in defiance of the authority of the Church, by reason of the refusal of a dispensation, there are just grounds for dispensing; for there is imminent danger, not only of a most serious scandal to the faithful, but also of perversion and loss of faith on the part of those so doing, and disregarding the impediments to matrimony, especially in countries where heresy flourishes unchecked. This was the teaching of this Sacred Congregation in an Instruction of 17 April, 1820, sent to the Archbishop of Quebec. Likewise, when the Vicar Apostolic of Bosnia had asked whether he could grant a dispensation to such Catholics as had no other grounds but a poisonous love,

when it is foreseen that if the dispensation be refused they will contract marriage before an unbelieving judge, the Sacred Congregation of the Holy Office on FERIA IV., 14 April, 1822, decreed : " The answer to be given to the petitioner must be that in such case let him use the faculties granted to him in Formula II. as he shall judge expedient in the Lord." The same must be said in the case of a Catholic woman who ventures upon marriage with a non-Catholic man.

12. ' Danger of incestuous concubinage. From the above-mentioned Instruction of 1822 it is clear that the remedy of a dispensation must be had recourse to for preventing anyone continuing to live in concubinage, to the public scandal and manifest danger of eternal salvation.

13. ' Danger of a civil marriage. From what has been said it follows that probable danger of those who are petitioning for the dispensation having what is called only a *civil* marriage, if they cannot get one, is a lawful reason for dispensing.

14. ' The removal of grave scandals.

15. ' Putting a stop to open concubinage.

16. ' Excellence of merits : when one who, by resisting the enemies of the Catholic faith, or by generosity towards the Church, or by learning, virtue, or some other means has deserved well of religion.'

Such are the more common and strong grounds which are usually brought forward when matrimonial dispensations are to be petitioned for ; concerning which theologians and interpreters of the sacred canons treat exhaustively.

But now this Instruction turns to those points which, besides the grounds for obtaining a dispensation, must, whether by law, custom, or the *Stylus Curiae* (*q.v.*), be expressed in the petition, so that if the truth be kept back or what is untrue is advanced even in ignorance the dispensation becomes null. These are :

(1) ' The name and surname of the petitioners must both be written down distinctly and clearly without any abbreviation of the letters.

(2) ' The diocese of origin or of actual domicile. When petitioners have a domicile out of the diocese of origin, they can ask, if they please, that the dispensation should be sent to the ordinary of the diocese in which they are now residing.

(3) ' The species (in its most determinate form) of the impediment, whether it be consanguinity or affinity, arising from lawful or unlawful connection ; public honesty, arising from



*sponsalia* or *matrimonium ratum*; in the case of an impediment of crime, whether it arose from the murder of the spouse with the promise of marriage, or from such murder with adultery, or from adultery alone with the promise of marriage; in spiritual relationship, whether it be between a god-parent and the person baptized, or between a god-parent and one of the parents of the person baptized.

(4) 'The degree of consanguinity, or affinity, or honesty arising from *matrimonium ratum*, and whether it be a simple or mixed degree, not only the more remote but also the nearer, together with the line, whether it be direct or collateral; likewise, whether the petitioners be related by a double tie of consanguinity on the father's side as well as on the mother's.

(5) 'The number of impediments: *e.g.* whether the consanguinity or affinity be twofold or manifold, or whether there be affinity, as well as relationship or any other kind of impediment, diriment or impedient.

(6) 'Various circumstances, such as whether the marriage is to be or has been contracted; if contracted, it must be stated whether this was done in good faith, at least on one side, or with a knowledge of the impediment; likewise, whether it was after the proclamation of banns and according to the form of the Council of Trent; or whether with a view of more easily obtaining a dispensation; finally, whether it has been consummated, if in bad faith, at least on one side, or with knowledge of the impediment.

(7) 'Incestuous connection between the spouses before the execution of the dispensation, whether before or after the petition, whether with the intention of more easily obtaining the dispensation, or whether without such an intention, and whether the connection be publicly known or whether it be secret. If these matters be kept back, the Sacred Congregation of the Holy Office on Feria IV., 1 August, 1866, declared that dispensations for all the forbidden degrees of consanguinity, affinity, spiritual and legal relationship, as well as of public honesty, were surreptitious and nowhere and in no way of any avail. But in petitioning for a dispensation from the impediment of affinity of the first or second degree of the collateral line, if the impediment arise not only from a consummated marriage with the deceased partner of either petitioner, but also from connection previous to marriage, or fornication with the same deceased committed before marriage with him had taken place, it is not necessary that mention should be made of illicit connection of this kind, as is clear from a reply of

the Sacred Penitentiary of 20 March, 1842, given with the approval of Gregory XVI. of sacred memory, to the Bishop of Namur, which the same tribunal in a letter of 10 December, 1874, declared to be general.

‘These matters should not be lost sight of, not only by those who have recourse to the Holy See to obtain any matrimonial dispensation, but by those who, by pontifical delegation, can of themselves dispense in order, as is but right, to make proper use of the faculties which they possess.’

### MATRIMONIAL IMPEDIMENTS

1. Matrimonial impediments are of two kinds :

(1) Diriment impediments (*q.v.*), which affect the validity of the matrimonial contract.

(2) Impedient impediments (*q.v.*), which affect the lawfulness of the same.

2. The Council of Trent decreed :

‘If anyone shall say that the Church could not constitute impediments destroying matrimony, or that she has erred in constituting them, let him be anathema.’ Sess. xxiv. can. 4

3. The First Westminster Council said :

(1) ‘When there is a case of a matrimonial impediment, let the priest send a petition to the bishop, stating the case and accurately describing the degrees of relationship or other cause for which dispensation is asked ; and he must at the same time set forth the reasons for which he considers it may be granted. If the bishop think proper to grant the dispensation, either using his own faculties or after petitioning and obtaining leave from the Holy See (if the case exceed the limits of the faculties which he enjoys), he must then, either himself or through his vicar, deliver to the priest, who has petitioned for it, the dispensation in writing with all the clauses of canon law, and with it a schedule, also, for attesting the execution of the dispensation. To this schedule the priest must subscribe his name and return it to the bishop, to be kept in the archives in witness of a lawful marriage.

(2) ‘Matrimonial dispensations are therefore never to be granted by word of mouth nor in an ordinary letter, but in a formal document accurately drawn up.’ xxii. 8, 9

## MATRIMONY

1. Matrimony is begun by *sponsalia (q.v.)*, it is made perfect by consent, and it is consummated by carnal knowledge. There are six points to be considered concerning matrimony, viz.

- (1) The nature of matrimony.
- (2) The conditions of validity.
- (3) The condition of lawfulness.
- (4) The impediments.
- (5) The dissolution of matrimony.
- (6) The celebration of nuptials.

Hence as many sections.

§ 1. *The Nature of Matrimony*

2. Marriage, according to canon law, can exist in three states :

(1) Natural marriage, which is formed between persons unbaptized and bound by no civil laws.

(2) Civil marriage, which exists between persons unbaptized but living under civil laws.

(3) Ecclesiastical marriage, which is between baptized persons or between persons one of whom at least is baptized. This marriage is defined : 'A sacrament between baptized persons by which a man and a woman, capable by natural and ecclesiastical law, are, with mutual consent, bound by a single and indissoluble matrimonial contract.' By the institution and will of Christ the contract and the sacrament are inseparable. Hence what is wrongly called civil marriage—that is, a marriage which is contracted in defiance of the laws of the Church, which profanes the nuptials consecrated by Christ, legalises concubinage, and attempts to destroy the sacramental nature of the contract—is altogether unlawful, as being against the very essence of matrimony among baptized persons. This does not mean that the State, as at present constituted, cannot lawfully make such civil laws as are necessary to secure those civil effects of the matrimonial contract which now are beneath its laws. But it cannot lawfully make any statutes which destroy the nature of the sacramental contract or impede the jurisdiction of the Church in sacred matters. The State can supplement, and should safeguard, the Church's laws, for these are founded upon revelation, reason, and righteousness.

3. The remote matter of the sacrament are the bodies of those

who contract; the proximate matter is their expressed consent. The form is the consent itself expressed by words or their equivalents which indicate the acceptance by both parties of the contract. The ministers of the sacrament are, according to the general opinion, the contracting parties themselves. The presence of the priest, sometimes necessary for the validity of the contract, is that of the giver of the Church's blessing.

4. Marriage is considered by canonists to be—

(1) Lawful, when it is contracted according to the laws and by lawful consent. Hence it has the condition of a natural contract.

(2) Ratified, when it is approved of by the Church and has the sacramental dignity: that is, marriage between baptized persons.

(3) Consummated, when it is perfected by carnal knowledge.

5. According to the manner in which it is contracted matrimony is—

(1) Public, when the contract takes place in the presence of the parish priest or other, his deputy, and the necessary witnesses.

(2) Occult, when it is so contracted that it does not appear to the people: *i.e.* without publicity.

6. Occult marriages, also known as marriages of conscience, are lawful under the following antecedent conditions:

(1) If the banns (*q.v.*) are dispensed, by one having authority, for lawful and grave causes.

(2) If a diligent inquiry be made as to the capabilities of the contracting parties.

7. Occult marriages are also lawful under the following concomitant conditions:

(1) That the parish priest or another, with his leave or that of the bishop, assist at the contract.

(2) That the parties are warned:

(a) To take care that their offspring are baptized.

(b) That they are recognised as legitimate children.

(c) That they are educated in piety and good morals.

(d) That they are duly provided for as regards temporals.

8. Occult marriages, finally, are lawful under the following subsequent conditions which are necessary for proving the legitimacy of the marriage:

(1) That after the ceremony a document containing notes as to the place, time, and witnesses be sent to the bishop.

(2) That the bishop transcribes the document in a book different from that in which public marriages are entered.

(3) That this book, fastened and sealed, be carefully preserved in the secret archives of the episcopal chancery.

(4) That the offspring be baptized in the church, and that the bishop be informed, so that he may note the fact in another secret book which is to be preserved with the same precautions.

9. As regards a kind of occult marriage known as *morganatic* it is enough to say that it takes place when a prince, after having had children by a noble wife, at her death, marries, with dispensation of banns, before the parish priest and witnesses, a woman of lower degree on the condition that neither she nor any children born from that marriage can acquire thereby any rights of heritage.

### § 2. *The Conditions of Validity.*

10. Three conditions are necessary for a valid marriage, viz. :

- (1) Freedom from diriment impediments (*q.v.*).
- (2) True and mutual consent expressed by words *de praesenti*.
- (3) The presence of the parish priest and witnesses.

The first and third conditions are considered in the articles on IMPEDIMENTS and CLANDESTINITY.

11. For the consent certain qualifications are necessary.

- (1) It must be true; and in the external *forum* it is always presumed to be so unless the contrary be proved.
- (2) It must be fully deliberate.
- (3) It must be expressed by some exterior signs.
- (4) It must be free from coercion or grave fear (*q.v.*).

12. The consent may be conditional if the condition be *de praesenti* or *de praeterito*; and if the condition be fulfilled the consent is equivalently absolute. If the condition be *de futuro contingenti* the validity of the marriage is suspended until the event of the condition, and the contractors are bound to await the event. If the condition be in itself repugnant to nature or to the end of matrimony, then the marriage is null. But if it be not repugnant to nature or to the end of matrimony, but base or even impossible, the condition is to be accounted as not existing, and the marriage is valid.

13. A marriage which is known in the internal *forum* to be null, but not so provable in the external *forum*, can be declared to be null in the external *forum*. Nor can the parties be allowed to contract another marriage so long as the impediment of the former marriage remain occult and its nullity be not proved in the external *forum*. Hence, if such persons enter upon another marriage,

*Cf.*  
S.C.P.F.  
11 Feb.  
1804, *Col-*  
*lectanea*,  
1225

in the external *forum* it is to be held as invalid ; and it is not lawful for them to remain in the second marriage although there be no danger of scandal so long as the former marriage has not been proved in the external *forum* to be null. In such a case they should make the impediment known to the proper ecclesiastical authorities, who have generally the power of dispensing in the external *forum*.

### § 3. *The Conditions of Lawfulness*

14. For lawfully contracting marriage are required :

- (1) Freedom from impeding impediments (*q.v.*).
- (2) The consent of parents on account of the reverence due to them. Their consent is not required for the validity of the marriage, and parents by withholding their consent cannot prevent the marriages of their children.
- (3) The proclamation of the banns (*q.v.*).

*Cf.* Trent,  
Sess. xxiv.  
cap. 4, *d.r.*  
S.C.C.  
20 March,  
1880

### § 4. *The Impediments*

15. The impediments to marriage are of two kinds :

- (1) Those affecting the validity of the contract ; or diriment impediments (*q.v.*).
- (2) Those affecting the lawfulness only ; or impeding impediments (*q.v.*).

### § 5. *The Dissolution of Matrimony*

16. Marriage can be dissolved in two ways :

- (1) By death.
- (2) By sentence of divorce (*q.v.*). This last is only a declaration on the part of the Church that the matrimonial contract never existed in a particular case, and so was null and void *ab initio*. Divorce as to the bond in a valid marriage is never allowed for any cause in the Western Church ; but there is a divorce as to the effects of the bond allowed in certain cases.

### § 6. *The Celebration of the Nuptials*

17. Marriages should be celebrated in the church and not in private oratories, or at home, unless with leave of the ordinary.

18. The time for marriage is before noon, so that the nuptial

mass can be celebrated, if the day allow, or at least the nuptial blessing (*q.v.*) be given.

19. The periods at which matrimony may be lawfully celebrated with publicity are from January 7 to Ash Wednesday exclusively, and from Low Sunday to the First Sunday in Advent exclusively.

20. The rite to be used is that of the Roman Ritual, with any additions sanctioned by custom or local authority.

*Collec-  
tanea,  
S.C.P.F.  
1520*

21. Those about to marry should prepare themselves to receive so great a sacrament by a sincere confession of their sins and a worthy reception of the Holy Eucharist ; and they should be warned of the grave sin they commit by contracting marriage if they be not in a state of grace.

22. In the case of those who are notoriously under ecclesiastical censure, the Sacred Penitentiary declared, 10 December, 1860, that first the priest should do all that he can to obtain reconciliation with the Church ; if the party refuse, and there be danger of serious evils, he must consult the ordinary, who, after due consideration, will decide what is to be done. But the celebration of mass is always forbidden.

23. The Fathers of the First Westminster Council passed the following decrees :

‘ There is scarcely any sacrament of the Church, concerning the administration of which more serious difficulties can arise, especially in a country where the civil laws do not recognise marriages contracted before the Church, and where the faithful live in the midst of non-Catholics. Priests having the cure of souls must therefore act with the greatest prudence in matters that regard the administration of this sacrament.

(1) ‘ They should frequently impress upon their people its sanctity, inasmuch as it was instituted by our Lord Jesus Christ and honoured by His first miracle ; they should also teach them to hold in abhorrence all marriages otherwise entered upon than by the Catholic rite ; and let them severely rebuke those who contract matrimony in a Protestant temple.

(2) ‘ The law of publishing in the church the banns of marriage must be observed. But it seems best to leave the manner and time of introducing this practice to the discretion of each bishop, who will diversely deal with the matter according to the different circumstances of the places.

(3) ‘ Priests must exhort and leave nothing untried to induce those who are about to contract marriage to go to confession previously and receive worthily the Holy Eucharist.

(4) 'Marriages are not to be celebrated in churches to which no district is attached with cure of souls.

(5) 'A marriage register should be accurately kept in every church where they are celebrated.

(6) 'Let no priest celebrate a mixed marriage (*q.v.*) without obtaining a promise, both from the Catholic and the non-Catholic party, that their children of both sexes shall be brought up in the Catholic religion; also from the non-Catholic party a promise of allowing the Catholic party the free exercise of religion; and a promise from the Catholic party to care for the conversion of the non-Catholic party.

(7) 'As it often happens that foreigners come to England for the purpose of contracting marriages, let priests be very careful not to take part in a marriage contracted *in fraudem legis*. Wherefore, in every such case, they should have recourse to the bishop; and the Instruction of the Holy Office, dated 21 August, 1670, concerning this case, and also in regard to the marriage of *vagi*, should be attended to.

(8) 'When there is a case of a matrimonial impediment, let the priest send a petition to the bishop, stating the case and accurately describing the degrees of relationship or other cause for which dispensation is asked; and he must set forth, at the same time, the reasons for which he considers that it may be granted. If the bishop think proper to grant the dispensation, either using his own faculties, or after petitioning and obtaining leave from the Holy See (if the case exceed the limits of the faculties which he enjoys), he must then, either himself or through his vicar, deliver to the priest, who has petitioned for it, the dispensation in writing with all the clauses of canon law, and with it also a schedule to attest the execution of the same. To this schedule the priest must subscribe his name and return it to the bishop to be kept in the archives in witness of a lawful marriage.

(9) 'Matrimonial dispensations are therefore never to be granted by word of mouth or in an ordinary letter, but in a formal document accurately drawn up.' D. xxii.

## MENDICANTS

1. Mendicants are religious who, in their first institution, were not able to possess *bona immobilia* even in common, and were therefore supported by alms.



2. The principal mendicant orders are the Friars Preachers, the Friars Minor and other Franciscan families, the Hermits of St. Augustine, the Carmelites, the Minims, the Jesuits, the Servites, and the Passionists.

3. The Fourth Council of Westminster decreed concerning religious mendicants, of either sex, as follows :

(1) ' As no one can be unaware of how serious an unseemliness and scandal it is for nuns and sisters offered to God to wander out of their monasteries contrary to the rules of their institute ; sitting at the table of seculars and without extreme necessity sleeping in their houses ; we strictly order their superiors not to allow their subjects, under any pretence whatever, to go out to collect alms without receiving in writing the previous permission of the bishop. By this decree we do not in the least wish to lessen or fetter the privileges of any institute granted by the Holy See ; but let them make use of the same moderately, and with the holy fear of God.

(2) ' Moreover, in reference to the brethren of mendicant orders who, in accordance with the privilege granted by the Holy See, are in the habit of going out to collect alms for the support of their convents, we think that their superiors should be admonished that the privilege for begging they enjoy within the diocese in which their convent is, by no means extends beyond the diocesan limits, unless leave in writing have been previously obtained from the ordinary of the places. Superiors should likewise be careful to select for this duty, for it is one exposed to manifold danger, only those who are advanced in virtue and modesty, strictly enforcing upon them not to make themselves annoying to the faithful by over-importunity. The brethren are strictly forbidden to wear the Roman collar or the dress of a priest.

xvi.

(3) ' We beseech in the Lord the clergy of the province of Westminster to take care, as speedily as possible, to send to the ordinaries information concerning those who transgress this decree, should there be any.'

## MENSA

1. The *mensa* is that portion of the endowments of a church or college, or the income of the same, which is assigned for the support of the individual or individuals belonging to it.

2. The episcopal *mensa* is the income set aside for the support of the bishop ; the capitular *mensa* is the income of the chapter.

3. The bishop at his consecration swears that he will not in any way alienate his *mensa*.

4. It is the duty of a bishop, when he takes possession of his see, to make inventory of the property of the diocese, and to separate what belongs to his own *mensa*. It is expedient that he should appoint one or two procurators to have, with his sanction, the administration in temporals of the episcopal house. They should have charge over all the income belonging to him, and at stated times give an account of what is committed to their care. They will be thus a due check upon his expenditure, and will be witnesses of his rightly administering and dispensing the goods of the Church. Hence not only will they be profitably administered, but the bishop will be able to give himself, with a whole mind, to those spiritual offices which are proper to his office.

*Cf. Zitelli,*  
p. 50

5. A bishop cannot add benefices established elsewhere either to the episcopal *mensa* or to the capitular *mensa*. This would be alienation. Hence what are called *mensal parishes*, i.e. parishes the income of which the bishop reserves to himself, appointing an administrator to do the work, are, unless the leave of the Holy See be obtained, illegal, as being alienations.

6. During the vacancy of the see the episcopal *mensa* is managed by one or several administrators appointed by the chapter. They have to give an account to the new bishop.

Trent.  
Sess.  
xxiv.  
c. 16, *d. r.*

7. From the episcopal *mensa* during a vacancy of the see, there is to be deducted a reasonable salary for the vicar capitular.

S.C.C.  
17 Nov.  
1594; 14  
Oct. 1602;  
6 March  
1847; 14  
Feb. 1857

## METROPOLITAN

1. A metropolitan is an archbishop who has suffragan bishops under his actual jurisdiction.

2. A metropolitan has ordinary jurisdiction over his suffragans, and is therefore their ordinary and immediate superior.

3. Concerning his jurisdiction the general rule may be laid down that the metropolitan has power over his suffragans only in the cases permitted by law; he has no power over their subjects except in appeals and in matters concerning the whole province. The metropolitan jurisdiction as a court of the first instance in purely civil cases brought by a cleric against his bishop is doubtful. The S.C.P.F. January 20, 1893, replied to a *dubium*: 'Since it is disputed among canonists, the Sacred Congregation does

not wish to decide the question by its sentence.' Such cases must, therefore, be brought directly before the Holy See or its representative.

4. He, or his vicar general in his absence, can compel his suffragans to do their duties, and can, if contumacious, oblige them with censures under two conditions :

(1) That he observe the due order of interdict, suspension, and then excommunication, unless the gravity of the cause make another course expedient.

(2) That he, at least *ex congruentia*, consult the Holy See.

5. He can supply for the negligence of his suffragans after having fixed a term for the fulfilment of a duty, if that be not already fixed by law.

6. He can receive appeals from the sentences of his suffragans provided that it be a due appeal after a definitive sentence or after an interlocutory sentence which has the force of a definitive one.

7. He convokes the provincial synod and presides over it. But he is inferior to it, and cannot deviate from its decrees.

8. For causes known and approved by the synod he can hold a provincial visitation, or even the visitation of one diocese. During that time he can hear the confessions of the subjects of his suffragans and absolve them even from reserved cases.

9. He can inhibit anyone from preaching in the province, and he can exercise jurisdiction on all subjects in the province in matters that concern the general welfare : *e.g.* in putting down a wicked custom.

10. He can order collections to be made throughout the province for the fabric of the metropolitan church.

11. He can issue edicts throughout the province in causes belonging to his jurisdiction.

12. He can depute a vicar capitular (*q.v.*) if a chapter fail in its duty in this regard.

13. He can take cognisance of the injustice of an excommunication pronounced by a suffragan, and he can absolve a subject whose bishop refuses to do so.

14. He can grant dispensations to the subjects of a suffragan who unjustly denies them.

15. He can collate to benefices which a suffragan, through neglect, has left vacant for more than six months; and he can institute one duly presented if the bishop be unwilling, after two months, to institute.

Trent,  
Sess. xvi.  
c. 20,  
*d.r.*; Bene-  
dict XIV.  
Constit.  
*Ad Mili-  
tantes*,  
30 March,  
1742

16. As their ordinary he can dispense the vows and oaths of his suffragans.

17. When a suffragan refuses to ordain a cleric, the metropolitan can compel him to give the reason.

18. On the other hand a metropolitan cannot compel a suffragan to appear, either personally or by procurator, before the metropolitan court.

19. He cannot take cognisance of their civil causes, whether they be plaintiffs or defendants, unless custom allow. Their criminal causes belong, the greater to the Holy See, and the less to the Provincial Council.

20. He has not the right to consecrate his suffragans; nor to take cognisance of their absences from their dioceses.

21. He cannot exercise any true act of jurisdiction over the subjects of his suffragans, except in appeals, in matters affecting the whole province and in visitations.

22. Of the honorific privileges of the metropolitan dignity the principal is the Pall taken from the body of blessed Peter. These are the rules governing it :

(1) It must be sued for, either personally or by a procurator, within three months of consecration or translation.

(2) It can only be used in church, in the province, and only in the celebration of mass.

(3) Its use is restricted to the days mentioned in the *Pontificale*.

(4) Until the metropolitan has been duly invested with the Pall he cannot lawfully :

(a) Call himself archbishop.

(b) Exercise those acts which are of the greater jurisdiction : *e.g.* he cannot convoke councils, confect the chrism, dedicate churches, ordain clerics, or consecrate bishops.

23. The metropolitan cross carried before him is his right in all the province, except in the presence of a legate, or a cardinal who is not a legate, or a nuncio with the powers of a legate *a latere*.

24. Under these same restrictions he can bless the people throughout the province; he can grant eighty days of true indulgence; he can use the *mozzetta* and can celebrate *in pontificalibus* anywhere in his province.

## METROPOLITAN COURT

1. The metropolitan (*q.v.*) has two official courts, viz. :

(1) The diocesan court of first instance.

(2) The provincial or metropolitan court for appeals (*q.v.*).

2. The two should be distinct ; though in form and organisation they are the same.

3. The members of the metropolitan court are :

(1) The archbishop as first judge in ordinary.

(2) The vicar general as second judge in ordinary.

(3) A fiscal procurator (*q.v.*).

(4) A notary (*q.v.*).

4. The court may be presided over by a delegated judge.

5. In England the metropolitan court of appeal in criminal cases has three assessors chosen out of seven priests nominated by the bishops every year. The mode of procedure in criminal cases sanctioned by S.C.P.F. 20 June, 1884, is as follows :

(1) 'As often as a cleric, after trial by the Commission of Investigation (*q.v.*) shall wish to lay an appeal against a sentence passed upon him by his ordinary, this appeal shall be made, first of all, to the metropolitan, who will submit to a second examination the process resulting from the first inquiry, and will examine afresh the cause according to the method prescribed for the Commissions of Investigation.

(2) 'To constitute a commission in the case of an appeal to the metropolitan three assessors will be chosen, to be selected from seven priests nominated for this purpose by the bishops every year in their meeting after Easter.

(3) 'From the sentence of the metropolitan it will always be lawful to appeal to the Holy See according to the decrees of the Sacred Canons.

(4) 'In cases of an appeal the acts both of the first and second investigations, in writing, are to be sent to Rome.

(5) 'If the first investigation should take place in the metropolitan diocese, and the priest, therefore, be a subject of the archbishop, the second investigation shall be made by the senior suffragan, who will consult the assessors of the Commission of Investigation of that diocese.'

6. In America, where the Instruction of 1878 is still in force, the metropolitan court is formed in the same way as the diocesan court, *i.e.* the judge and the assessors or Commission of Investigation. There is no special commission prescribed for cases of appeals. But where the Instruction S.C.P.F. *Cum magnopere* obtains the court is formed as in paragraph 3.

## MILITARY CHAPLAINS

1. Military chaplains are those who are set aside to attend to the spiritual wants of soldiers either in barracks or in the field.

2. The Council of Trent has decreed that the jurisdiction of ordinaries in their diocese must be respected ; and military chaplains are under this ordinary jurisdiction unless they have a papal indult. *Cf. Sess. xxiv. c. 20*

3. This indult is never granted to military chaplains in barracks except under special and exceptional circumstances. But it is easily granted for use in the field.

4. Military chaplains have no parochial benefices, and therefore do not have the ordinary jurisdiction which belongs to parish priests. But, as they have special duties of a quasi-parochial nature, the question arises whether they can hear confessions in barracks without reference to the bishop of the place. Lehmkuhl quotes decrees of 6 March, 1694, and of 29 January, 1707, which deny that military chaplains, whether secular or regular, can administer the sacrament of Penance to soldiers in barracks without the special permission of the Holy See and the approbation of the ordinary of the place. But the learned Jesuit holds that if a bishop be appointed as chaplain-general over the whole army, he can give faculties to the chaplain in barracks under him without any reference to the local ordinaries. *Theologia Moralis (ed. 8), ii. 378*

5. Hence it appears that chaplains have no ordinary but only a delegated jurisdiction.

6. For the British Army the archbishop of Westminster has been appointed apostolic delegate for military chaplains ; and these get their delegated faculties from him.

## MINOR ORDERS

1. The Council of Trent decreed concerning the minor orders :

‘ That the function of holy orders, from the deacon to the door-keeper, which functions have been laudably received in the Church from the times of the Apostles, and have been for some time interrupted in very many places, may be again brought into use in accordance with the sacred canons ; and that they may not be traduced as useless by heretics, the Holy Synod, burning with the desire of restoring the pristine uses, ordains that for the future such functions shall not be exercised but by those who are actually

*Sess. xxiii. c. 17. d. r.*

F F

in the said orders; and it exhorts in the Lord all and each of the prelates of the churches, and commands them that it be their care to restore, so far as it can be conveniently done, the said functions in the cathedral, collegiate, and parochial churches of their dioceses, where the number of the people and the revenues of the church can support it. . . . And if there should not be unmarried clerics at hand to exercise the functions of the four minor orders, their place may be supplied by married clerics of approved life, provided that these have not been twice married, be competent to discharge the said duties, and wear the tonsure and the clerical dress in Church.'

2. There is no obligation of having the mind to ascend to sacred orders before the minor orders can be conferred.

3. The knowledge of Latin is required, at least, in those admitted to the minor orders, and the due interstices (*q.v.*) should be observed.

### MISSIONARY RECTORS

1. Missionary rectors are, in England, those who in virtue of a decree S.C.P.F. 12 April, 1852, are appointed by the ordinary over those churches which he, with the advice of the chapter, has selected as quasi-parochial churches.

2. Hence missionary rectors have quasi-parochial rights and among these is that of permanency.

*Cf.* I.  
West.  
D. xiii. 4

3. A missionary rector cannot be removed against his will except for some canonical fault; and not even then until the Commission of Investigation (*q.v.*) have examined into the case and advised the bishop.

Leo XIII.  
*Romanos*  
*Pontifices*,  
1881

4. In the division of a mission the opinion of the rector has to be asked before the bishop proceeds.

I. West.  
D. xxv. 12

5. The appointment of a missionary rector belongs to the bishop, and 'no right of preferment is required by serving as second priest on a mission or even temporarily administering it.'

*See* RECTORS.

### MISSION OATH

1. The mission oath which is to be taken by those ordained *ad titulum missionis* is conceived in the following terms:

'I N., son of N., of the diocese (or vicariate) of N., promise and swear that after I shall have been promoted to holy orders I will

not without special permission from the Apostolic See or the Sacred Congregation of Propaganda, enter any religious order, society, or regular congregation or make any profession in any one of them.

‘I likewise vow and swear that, in this diocese (or vicariate or the mission to which the Holy See or the Sacred Congregation of Propaganda may please to send me), I will perpetually labour and work for the salvation of souls under the complete direction and jurisdiction of R.P.D. the ordinary for the time being : this I will also do if, by leave of the aforesaid Apostolic See, I enter any religious order, society, or regular congregation and make profession in any of them.

‘I likewise vow and swear that I understand and will keep the aforesaid oath and its obligation. So help me God and these Holy Gospels of God.’

2. In an Instruction S.C.P.F. upon the title for ordination, 27 April, 1871, it is said :

(1) ‘Those who have been ordained by this title receive the necessities of life from the apostolic ministry in the mission to which they have been appointed. . . . To this Instruction is added a form of the oath already approved of and customary, and the Sacred Congregation strictly enjoins its use by all, in order that uniformity may be kept in the matter.

(2) ‘Those who are ordained on this title are in virtue of this oath precluded from entering into religion without permission from the Holy See ; for it has been reserved to its judgment, after first hearing from the ordinary to whom he is subject, to decide whether the needs of the missions, to the service of which they are bound, may allow this.’

3. A decree S.C.P.F., 18 August, 1885, declares that the mission oath binds for the whole ecclesiastical province, so that priests thus ordained may, with the consent of both ordinaries, be transferred from one diocese into another merely by the conferring of a fresh title without the necessity of taking a fresh oath.

4. The Fourth Westminster Council says :

‘From . . . the sanctity of the oath arises that mutual bond x. 7 between a priest and his own bishop, by means of which they are happily united in the faithful discharge of their several duties, linked together as they are by a common work and mutual assistance in it.’

5. The mission oath is, therefore, of the nature of a contract between the bishop and the priest. The one undertakes to do



certain work and the other to provide the necessaries of life. The contract cannot be broken without mutual consent, and, unless there be canonical reasons to the contrary, the bishop can enforce its observance.

### MISSIONS

1. In a canonical sense the term 'mission' is used to express either a district assigned to a vicar apostolic or other superior or the smaller districts confided by him to a priest. In places where the episcopal hierarchy has been established, the term 'mission' is confined to the districts of a diocese which are divided into quasi-parishes; and it is only a temporary designation until these receive the canonical parochial form.

2. The First Council of Westminster in 1852 decreed :

'The ecclesiastical hierarchy having been re-established by our holy Lord the Pope, it is altogether fitting that a plan of management in consonance with it should, as far as the circumstances of places permit, be restored. This cannot be done altogether; for neither can we define the limits of parishes nor make canonical institution of them, both by reason of the distance of churches from each other and of the fact that in place of churches the chapels attached to the houses of laymen are in many instances used for the missions, as well as for many other reasons which it seems superfluous to enumerate here. Hence the archbishop and bishops have determined to beg our holy Lord the Pope to deign to allow and ratify a form of government proposed by them by which both the inconveniences enumerated may be avoided and the method of parochial government be introduced by degrees. And to this our petition his Holiness yielded, as may be seen by the decree S.C.P.F. dated 21 April of the present year &c.

(1) 'By virtue, therefore, of this, until it is otherwise provided by the Holy See, let certain churches be selected in each diocese, by the authority of the bishop, but with the advice of the chapter, which seem more suitable to be regarded *ad instar paroecciarum* (parishes).

(2) 'And over them let there be placed by the ordinary a priest who may have the title of missionary rector (*q.v.*), and have the care of the church and of souls, as do other heads of churches in England; but let him be considered as instituted permanently.

(3) 'To forestall any questions that may arise, we declare that

the bishop, with the advice of the chapter and in spite of the deputation of the missionary rector, may build new churches within the limits of the mission over which he is set, and give them a portion thereof should necessity or utility in regard to the faithful people demand it. But these limits let the bishops take care to have defined as soon as possible.

(4) 'If there are two or more priests in the same mission we decree that one alone is to be appointed as the head to attend to the cure of souls and the administration of the church or congregation.

(5) 'In places where it happens that the bishop has not fixed upon any boundaries we wish that the line midway between the two nearest churches should as far as can be regarded as the boundary.' D. xiii. 1, 2, 5, 6

3. The S.C.P.F. 21 April, 1852, decreed :

'Although in the restoration of the episcopal hierarchy throughout the realm of England the observance of the common ecclesiastical law generally was prescribed, yet it is found that this can hardly be done *statim*, seeing that the necessary prerequisites are on some points wanting ; so that the missionary state has to some extent to be reconciled with the establishment of dioceses, as in several cases it happens, until by God's goodness the common ecclesiastical rule can be completely observed. Of this description is that part of the canon law which refers to the establishment of parishes. . . . In each diocese, by the bishop's authority, let some churches which seem suitable to be regarded *ad instar paroeciarum* be selected with the advice of the chapter. Over these let there be, nevertheless, placed by the ordinary a missionary rector,' &c.

4. From the above it is clear that it is the church which is appointed a quasi-parish ; and, therefore, the right of having a permanent rector is unalienable.

5. 'Offerings of the faithful for the propagation and ornament of religion, for the support of the clergy, for the relief of the poor, and for other pious uses are to be considered as made to God and the Church ; and the administrators or guardians, whether they be ecclesiastics or laymen, are to be held as nothing more than dispensers of them, having to give an account to God.' II. West. viii. 1

6. The proceeds of each fund must be 'most accurately applied to the use defined by' the donor or testator. Ibid. 2

7. 'If this intention does not appear from any trustworthy document, the rules or canons by which one can rightly judge of such a will should be observed.' Ibid. 3

(1) 'Buildings for religious uses erected, wholly or in part, from

money contributed by the faithful, or even by any society that administers the alms of pious Catholics, belong for ever to the place where they stand. And although the mission in question be occupied and administered by some religious body, those alms are to be presumed to have been given not to that body but to promote the worship of God and to relieve the poor and are to be applied for these uses in that place. When erected by a benefactor the same rule applies unless it can be most clearly proved that he did not intend the building for the advantage of the faithful in that place, but that he wished to make a gift to that order.

(2) 'Much less is it lawful for any cleric, or even for the bishop himself, to alienate church property, as is evident from almost numberless decrees of canon law.'

(3) 'In every mission, the money contributed by the faithful (for seat rents, offertories, house-to-house collections, and special collections) . . . is to be accounted church property and not as gifts given to the priest.'

(4) 'As soon as any priest enters on his mission let him receive an inventory of all things belonging to the mission from the vicar foran (*q.v.*) or from some one deputed by the bishop. He is bound to keep the furniture and buildings in good repair, yea, rather to improve them, that he may deliver to his successors as much, at least, as he received himself.'

(5) It is also to be generally understood, according to a rule of canon law, that things adapted for ecclesiastical purposes given to a missionary are, unless there be proof to the contrary, given to the mission.

(6) 'Whoever is set over the administration of a mission, under whatever title, should keep a day-book of all the receipts and expenses of the mission, both of which should be entered most accurately every day in their proper order. He should also keep another book commonly called a ledger to which he will transfer, every month or three months, all the entries in the other book arranged in order, according to the heads under which each sum received or expended ought to be placed.

(7) 'Every administrator should keep an open account in some bank in his own name and in the names of two honest persons. Let these know that they are taken only to prevent the money from any peril of loss and that they must not interfere in the administration. If one fail from any cause the two who remain shall take care to have another elected by the bishop to supply the place. The administrator should never keep for longer

than ten days on hand more than 20*l.* of money belonging to the mission—that is to say, money which does not belong to himself; but he should diligently place it in the bank.

(8) 'All buildings belonging to a mission should be insured against fire by an annual payment to some society for this purpose. *Cf. D. viii.*

8. 'As the obligation of paying tithes no longer exists amongst us, let the faithful be reminded that they do not on this account exempt themselves from the duty of providing for divine worship and for the proper support of sacred ministers. The faithful, who through devotion or for any other cause, do not frequent the quasi-parochial or mission church of the district in which they reside must not think themselves dispensed from the obligation of aiding it and supporting its pastors. Moreover, with regard to relieving the wants of the poor and providing for the education of children, they ought to be as solicitous as those who go to their own church. Therefore, by their alms let them help according to their means, in the fulfilment of these duties, their lawful pastors, who, in cultivating the vineyard of the Lord, bear the burden of the day and the heat. *I. West. xxiii. 4, 5*

9. 'Regulars are allowed to have missions with the leave of the Holy See, and they are bound to render an account to the bishop of all moneys given with a view to the mission.' *Cf. Leo XIII. Romanos Pontifices, 1881*

## MIXED MARRIAGES

1. Mixed marriages, that is, marriages between Christians, one of whom is a Catholic and the other a non-Catholic, are forbidden by the Church; and mixed communion is an impedient impediment (*q.v.*). The Church has always abhorred these marriages both on account of the danger of perversion and the difficulty of educating the offspring as well as on account of the *communicatio in sacris*.

2. For grave reasons the Pope is accustomed to dispense with the prohibition, and he alone can dispense.

3. When the Catholic party asks for the dispensation, the ordinary should endeavour to procure the conversion of the non-Catholic; and if this cannot be had, he should exhort the Catholic to desist from the marriage. If neither of these be of any avail, then he can make use of the apostolic faculty which he has, and grant a matrimonial dispensation (*q.v.*).

4. The conditions on which a dispensation is issued are as follows :

(1) The Catholic party is to have the full and free exercise of religion.

(2) All the children are to be brought up Catholics.

(3) The Catholic party must promise to do all that is possible to procure the conversion of the non-Catholic.

5. When a mixed marriage has taken place without dispensation, the ordinary should try to get the non-Catholic to agree to the above conditions ; and, if the Catholic be penitent, then absolve him or her from any censures that may have been incurred, enjoining a salutary penance and due reparation of the scandal.

6. An Instruction was sent out by order of Pius IX. 15 November, 1858, declaring that the Church has ever disapproved of these marriages, and only allows them with reluctance and solely on express conditions that all necessary and fitting precautions be previously taken that are called for by the natural and divine law.

7. To obviate certain misunderstandings which had arisen about the abuse, the S.C.P.F. issued an Instruction to the bishops of England, 25 March, 1868, and declared :

‘ It by no means suffices for allowing a mixed marriage that the parties are ready to agree to the precautions alluded to above as well as to the other *clausulae* (*q.v.*) accustomed to be used in the rescripts (*q.v.*) of the Apostolic See ; but just and grave causes are altogether necessary, that the faculty of dispensing from the impediment of mixed communion may be lawfully put into execution. For these precautions are exacted by the natural and divine law, and must be insisted upon that the intrinsic dangers which are in mixed marriages may be removed ; but, beside, there must of necessity be some *grave incommodum*, which cannot in any other way be avoided, for the faithful to be allowed to expose themselves to grave dangers of faith and morals, even with timely precautions. And if in the aforesaid Instruction the custom of making use of the rite prescribed lawfully in the diocesan ritual for marriages, always of course without the celebration of mass, seems to be tolerated for mixed marriages, this is only granted as something exceptional, and on condition that all things connected with the matter, with the place and the persons, have been carefully considered, the burthen of the truth and necessity of all the circumstances resting on the bishop’s conscience. So far is it from the fact that by anything therein the principles which the Holy See has always professed are in the least degree departed from. Wherefore I earnestly appeal to your charity that to your utmost in the Lord you will endeavour and strive to keep the faithful under

your charge from contracting mixed marriages, and so keep clear of the great dangers which accompany them. And this you will the more easily accomplish if you are careful that they are made aware conveniently of the peculiar duty of hearkening to the Church in this matter as well as of obeying their superiors who will have to render a very strict account to the Eternal Prince of Pastors if they not merely allow at times, for weighty reasons, marriages to be contracted by the faithful with non-Catholics, but permit them readily and at the mere will of petitioners.'

8. The question arises sometimes, in the case of mixed marriages, whether the ceremony or a ceremony can take place before a non-Catholic minister. In an Instruction given to the Hanoverian bishops, 17 February, 1864, the course to be followed is made quite clear :

'It is known that in some places an heretical minister occupies the position of a mere civil magistrate, and that spouses are accustomed, and indeed obliged, to present themselves before him for a political end—namely, that they may be regarded as lawfully married, and their offspring deemed legitimate. Now, if heretics are pressing in the matter or the civil law binding, there is no objection solely for the purpose of supplying the legal duty, to the Catholic party accompanying the heretical party before the minister addicted to heresy either before or after the marriage is contracted according to the form prescribed by the Council of Trent. For the Sacred Congregation answered *affirmative* to the question, some time ago laid before it : whether a Catholic who is contracting marriage with a heretic in the presence of his Catholic parish priest may lawfully, at the instance of heretics, ratify this marriage before an heretical minister if there be no show or use of heretical rites, and that the action of the heretical minister be, and is considered to be, for the civil and legal satisfaction of the parties.

'But whenever the heretical minister is held to be in a sacred character, and discharging, as it were, the duty of a parish priest, it is unlawful for the Catholic party to renew his consent to marriage with a heretic before such a ministry, because it would be made use of as a kind of complement to the religious ceremony ; and the Catholic party would be joining in an heretical rite, and hence there would be an implicit yielding to heresy and altogether unlawful communion with heretics *in divinis*. Wherefore, although this evil custom has grown so strong that it can be hardly put down by the clergy, nevertheless every effort of

earnestness and zeal must be made to extirpate it. And, indeed, Benedict XIV. openly teaches that it is unlawful for those who are contracting marriage to present themselves before an heretical minister if he act in a sacred capacity ; and that those who thus contract are guilty of grievous sin, and are to be admonished.

‘Let, therefore, parish priests and missionaries be instructed in good time by you to teach the faithful both at public catechetical instructions in the Church and in private, concerning the constant doctrine and practice of the Church ; so that they may wholesomely keep as far as possible from mixed marriages, or, at any rate, may altogether be opposed to celebrating marriage before an heretical minister in his sacred capacity ; for this is altogether unlawful and sacrilegious. This was the reply given to the bishop of Treves on Feria IV., 21 April, 1847.

‘Let parish priests, moreover, know that they must not remain silent if the question be put to them by the contracting parties, or if they happen to know for certain that these are going before an heretical minister, acting in his sacred capacity, to renew their consent ; but they must admonish them as to the very grievous sin they are committing, and the censures they are incurring.

‘But if, in any special case, the parish priest is not asked by the parties whether they may go to the heretical minister, and no explicit declaration be made by them of their being about to do so, and yet he should foresee that they will perhaps go to renew their consent, he may, with a view of avoiding great evils, hold his peace, if he judge from the circumstances of the case that any warning will be unavailing or rather harmful as turning material sin into formal sin, provided there be no scandal, and that the other conditions required by the Church have been fulfilled and the precautions duly taken, especially the one that concedes full liberty in the exercise of religion to the Catholic party and the education of the offspring in the Catholic religion. But if it be wished to renew the consent before the parish priest after marriage has been contracted in the presence of an heretical minister, and this is publicly known, or even made known to the parish priest by the parties themselves, he shall not be present at this marriage unless everything has been done that ought to be, and the Catholic party, repenting of the deed done, has undergone previously due penance and has duly received absolution from the censures incurred.

‘The Sacred Congregation, therefore, has great confidence in the

Lord that you will adhere prudently and firmly to these points, and secure that the deposit of inviolate doctrine be kept pure and safe ; that the morals of Catholics may be in accordance with the faith ; that the evils apprehended may be curbed ; and that the faithful, strengthened by teaching and example, may walk in the path of justice.'

9. The Holy Office, Feria IV., 8 June, 1864, declared that the renewal in England of the consent before an heretical minister was an abuse which ' must be abolished, mainly by reason of the scandal arising from it ; that the faithful are to be taught betimes, whenever an opportunity offers itself, what a sin they commit, and what censures they incur by renewing their consent before an heretical minister in his religious capacity.'

### MONASTERY

1. A monastery is a house where religious live the common life under rule.

2. Monasteries are either exempt from episcopal jurisdiction, or are under the bishop of the diocese.

3. To enjoy the canonical privileges attached to monasteries they must fulfil the following conditions :

(1) They must be erected canonically.

(2) The leave of the Holy See is required for the erection of monasteries of men, whether mendicants or not. It is also required for the erection of convents of women whether with solemn or with only simple vows.

(3) There is, moreover, required the licence of the bishop unless the Holy See expressly dispense. The vicar general cannot grant them leave without a special mandate ; nor *sede vacante* can the vicar capitular. The bishop cannot refuse the licence without a just cause, and an appeal lies to the S.C.E.R. against an unjust refusal.

(4) In the event of translating a monastery from one site to another in the same locality the leave of the Holy See is not, as a rule, required ; for translation is not properly erection.

(5) The licences of both the Pope and the bishop are required for the re-establishment of a monastery which has been deserted, but not for the reassumption of a house from which the religious have been expelled unjustly.

(6) The bishop can grant the erection of a new monastery without summoning and hearing the opinion of the superiors of existing monasteries, if it be clear to him that the new foundation

*Cf.* Innocent X. Constit. *Instauranda*, 22 Oct. 1652, and Benedict XIV. *De Synodo*, lib. ix. c. 1, n. 9 Craisson, n. 2543 Trent, Sess. xxv. c. 8, *De Regular.* and Urban VIII. Constit. *Romanus Pontifex*, 1624 Bouix, *De Regular.* pp. 260-264



S.C.E.R.  
29 Sept  
1687  
S.C.E.R.  
17 Nov.  
1617

Gregory  
XV Con-  
stit. *Cum*  
*alias*, 17  
Aug. 1622  
Craisson,  
n. 2558—  
2560  
Bonix,  
*ibid.* p. 301  
Gregory  
XV. *ibid.*

will not prejudice the others. But if it be not clear to the bishop, he is bound, in the case of religious men, to call and hear the superiors of houses within 4,000 paces, or other distance as provided by the special constitution; and their consent is necessary.

(7) Although the *parochus* is not necessarily to be summoned, yet he has the right of opposing the erection by the bishop of a new monastery within his parish, if his strict rights be infringed. If he depend for his support on the voluntary offerings of the faithful, he will have a lawful cause to oppose the erection if the offerings be thereby notably diminished.

(8) There must be at least twelve religious living in the house. Houses of less number pass, by common law, under the jurisdiction of the bishop.

4. Leo XIII., Constit. *Romanos Pontifices*, 1881, declares—

‘That regulars dwelling in residences on the mission are exempt from the jurisdiction of the ordinary, no less than regulars living within the cloister, excepting in cases expressly mentioned by the law, and, speaking generally, in those matters that have reference to the cure of souls and the administration of the sacraments.’

5. The First Westminster Council decreed :

(1) ‘No monastery—that is, no new house—for religious women shall be founded without leave of the bishop, who must be fully informed as to the institute, its laws and end.

(2) ‘With the exception of exempt monasteries, which are lawfully under some regular superior, all the rest are subject to the ordinary’s visitation, even though they may depend upon some other house, even across the sea.’

xxviii.

## MONITIONS

1. Monitions are of two kinds :

(1) Paternal.

(2) Canonical.

2. Paternal monitions are the first steps required by the law of the Church after a cleric has been accused of some fault or abuse, which has been inquired into with sufficient proof or probability of the truth of the accusation resulting.

3. Paternal monitions may be given either personally by the bishop or by one delegated for the purpose or by letter.

4. Paternal monitions cease to be such if they contain any threat of punishment.

5. In paternal monitions the accused must be told of the existence of the charge made against him ; but care should be taken not to give any indication of the names of those who have delated the case.

6. Paternal monitions are sometimes effective, in which case no further steps are required. But if they fail, recourse must be had to canonical monition.

7. Canonical monition must be made in the form appointed by law.

8. Canonical monition has to be given three times with an interval of two days between the monitions.

9. It must be given in such a manner that its execution can be proved by some act.

10. Even here no threat of punishment is allowed.

11. If this fail, then an Act of Injunction has to be issued in which a formal precept is given together with the threat of some specified ecclesiastical punishment in case of disobedience.

12. It is not until after the threefold canonical monition that the voice of threatening is heard. Christ has given the procedure in these words : ' If thy brother shall trespass against thee, go and reprove him between thee and him alone. If he shall hear thee, thou hast gained thy brother. But if he will not hear thee, take with thee one or two more, that in the mouth of two or three witnesses every word may be established. And if he will not hear them, tell the Church. And if he will not hear the Church, let him be unto thee as the heathen and a publican.'

S. Matt.  
xviii.  
15-17

## MOTU PROPRIO

1. A *Motu proprio* is a kind of apostolic letter (*q.r.*) generally in the form of a decree issued by the Roman Pontiff on his own initiative. The style is that of a breve (*q.v.*), e.g. *Pius PP. X., motu proprio*, with a clause giving the object of the legislation.

2. It differs from breves in that it is not given *sub annulo Piscatoris*, and it bears at the end the Pope's name, e.g. *Pius PP. X.* It is not countersigned by any official.

3. It may be in any language, generally in Latin or Italian.

4. *Motu proprio* is also a phrase which occurs in many papal documents, and it has, amongst many meanings, the following senses :

(1) This clause presumes that the Pope wishes to use the fullness of his power.

(2) This clause, in dispensations, interprets them in the widest sense.

(3) It has sometimes the effect of the clause *non obstantibus*.

(4) A rescript accorded *motu proprio* produces its effect even when it would be contrary to laws.

(5) What a Pope does *motu proprio* in favour of a person is valid, although it be contrary to his own decrees.

(6) A rescript so granted produces its effect in favour of the other even before he presents it.

(7) The clause *motu proprio* deviates even from expressed reservations.

(8) It excludes all subreption (*q.v.*).

(9) It does not imply a dispensation of irregularity or other incapacity.

(10) It never takes away the rights of a third person.

(11) It is never to be presumed, if it be not expressed.

(12) It does not give faith to what is narrated.

## MUSIC

1. The Council of Trent decreed :

Sess. xxii.

‘They shall also banish from their churches every kind of music in which, either in the organ or in the simple chant, there is mixed anything lascivious or impure.’

2. After many attempts made by the Holy See, especially in Italy, to reform the music used in churches, Pius X. by a *Motu proprio* dated 22 November, 1903, issued an Instruction on Sacred Music to which, as to a juridical code of sacred music, he gives the force of universal law. The main points are these :

(1) Sacred music must possess the qualities proper to the liturgy, *i.e.* holiness, goodness of form, and universality.

(2) The Gregorian or plain song is in the highest degree ‘the chant proper to the Roman Church,’ and ‘the supreme model for sacred music.’

(3) ‘The more closely a composition for church approaches in its movement, inspiration, and savour the Gregorian form, the more sacred and liturgical it is ; and the more out of harmony it is with that supreme model, the less worthy is it of the temple.’ Hence other music, ancient and modern, than the plain song is allowed so long as it has the above qualities.

(4) The liturgical language being Latin, the vernacular is for-

bidden in solemn liturgical functions, and the text must be respected without undue repetition.

(5) Musical compositions for the Church must retain 'that particular conception and form which ecclesiastical tradition has assigned to them, and which is admittedly expressed in the Gregorian song.'

(6) The singers have a real liturgical office, and 'therefore women, as being incapable of exercising such office, cannot be admitted to form part of the choir or of the musical chapel.' Only men of known piety and probity of life are to be admitted to sing in the musical chapel of a church.

(7) The organ is permitted, and 'in some special cases within due limits and within the proper regards, other instruments (excepting the piano and "noisy and frivolous instruments such as drums, cymbals, bells, and the like") may be allowed, but never without the special licence of the bishop &c.

(8) 'It must be considered, in general, a very grave abuse when the liturgy in ecclesiastical functions is made to appear secondary to and in a manner at the service of the music, for the music is merely a part of the liturgy and its humble handmaiden.'

(9) Diocesan commissions 'of persons really competent in sacred music' must be appointed in the dioceses to watch over the music executed in the churches and to see 'that it is adapted to the powers of the singers and be always well executed.' The *schola cantorum* (q.v.) is to be introduced whenever possible, at least in the principal churches, and due attention given to the subject of sacred music in seminaries. 'It is of the utmost importance that the Church herself should provide for the instruction of its masters, organists, and singers according to the true principles of sacred art.'

3. The Holy Office, by a decree 7 July, 1864, declared that heretics could not be allowed to sing in our churches; and on 1 May, 1889, calling it an abuse, refused to tolerate even heretical, schismatical, or Jewish children frequenting Catholic schools to sing in our churches, although Catholic singers were scarce.

*Colloc-  
tanea*,  
S.C.P.F.  
n. 1845;  
n. 1851

4. The Council of Westminster decreed :

(1) ' . . . It is better to give the faithful simply a low mass than to attempt one . . . with wretched music rather driving away than exciting devotion. The singing, especially at mass and benediction, should be grave and devotional, so that the faithful, listening to it, may at one time be moved to tears with St. Augustine, at another with the choirs of angels sing with great joy praises to

I. West.  
xviii. 20

God and to the Lamb. The children, also, should be taught music in school, so that the singing of women in the choir, especially of those paid, may be excluded from the church. Thus, by degrees, will be brought about (what we much desire) that the whole body of the faithful will join with one voice and heart in the psalmody. The singing should not be protracted so as to stop the mass in places where the rubrics do not allow it.

IV. West.  
xiii. 4 (2) 'That, as far as practicable, the laws as to the use and silence of the organ in the *Caeremoniale Episcoporum*, which is binding everywhere, should be kept.

(3) 'That harmonised singing be severe and simple; that the words be intelligible; that there be no frequent repetition; that there be no addition, omission, or change in the sacred liturgy; and that the singing should be of such a length as not to necessitate an interruption in the course of the mass save when the rubrics so permit. Likewise the music should, as much as possible, be in accord with the season of the year and the nature of the feast.

(4) 'Priests should remember that the custom still prevailing in some places of attracting Catholics and non-Catholics to the divine offices by advertisements and by placards giving the names of the singers and musicians as well as the kind of music and the pieces that are to be sung, is exceedingly opposed to the glory and reverence of the most holy sacrament of the Eucharist and gravely unbecoming the worship of Almighty God. . . .

(5) 'We wish, likewise, that rectors of churches should not publish in the papers, nor allow anyone else to do so, accounts savouring of the theatre and criticisms on the art and elegancies of the singers, as is the practice of upholders of spectacular performances.'

## NATIONAL COUNCILS

1. A national council is one which consists of the Catholic bishops of a nation.

2. It belonged to the Patriarch, or to the Primate, or to another having competent authority, to convoke the assembly. But now it can only assemble by order of the Pope, who determines everything concerning its celebration and appoints an apostolic delegate to preside.

3. There is no stated time for holding these councils.

4. The object in view is usually to introduce a uniformity of discipline and a general method of procedure.

5. Like provincial councils (*q.v.*) the decrees of national councils have no force until they have been revised by the Holy See.

### NECESSITY

1. Necessity is opposed to liberty. There are three kinds of necessity, viz.

(1) Necessity of means : that is, something is so necessary for a particular end that without it, even if it be omitted inculpably, the end cannot be reached by the ordinary law.

(2) Necessity of precept : when something has to be done necessarily under the obligation of a precept.

(3) Mixed necessity : *i.e.* both of precept and of means.

2. Necessity makes that permitted which otherwise is prohibited by law. But necessity has to be proved.

3. Necessity as regards one's neighbour is either spiritual or corporal. Both of these are divided into :

(1) Extreme, which obliges us to help him from our necessities.

(2) Grave, which obliges us to help him from our superfluities.

(3) Common, which obliges us to help him from those of our goods which are simply superfluous for our life and state.

### NEGLIGENCE OF PRELATES

1. The negligence of prelates is the omission of that which by law or custom prelates are bound to do by reason of the office which they bear.

2. It is a celebrated controversy whether the jurisdiction of a negligent bishop devolve upon the metropolitan. Though canonists of weight hold that it does, it seems more probable that it does so only in cases provided by the law.

3. Barbosa gives no fewer than forty cases which are provided for by the law. The principal are :

(1) If he refuse to absolve an excommunicated person when he ought.

(2) If he refuse to grant a dispensation that is due.

(3) If he neglect to punish the notorious crimes of his subject.

(4) If he neglect to collate within the proper time to benefices which *iure proprio* belong to him. The right devolves upon the chapter. If both neglect, then the collation usually falls to the metropolitan. If the presentation belong to the bishop, not *iure*

*De Officio  
et Potestate  
Episcop.  
tit. 4, n. 19*

*proprio*, but *ex iure speciali*, e.g. by the neglect of an inferior collator, then by the negligence of the bishop the right devolves immediately upon the metropolitan.

(5) If the bishop neglect for two months to institute those promoted to parishes the duty falls to the archbishop.

(6) If the bishop neglect to execute last wills, the execution falls to the archbishop.

(7) All causes of the subjects of a suffragan which suffer by the denial of justice or immoderate delay devolve, by appeal, on the metropolitan.

### NEOPHYTE

1. Neophytes are not to be promoted to sacred orders until their constancy in the faith is proven.

*De Synodo*, vii.  
c. 65, n. 6

2. Benedict XIV. says that the time of probation is uncertain, as it is not laid down in the law; therefore it seems to be left to the will and prudence of the bishop.

### NOMINATION

1. Nomination is the act by which a person is elevated to a charge or dignity at the choice of another. It differs from election, which is the act of a college; nomination is the act of an individual.

2. Canonists distinguish two kinds of nomination, viz. :

(1) Simple, which concerns those who ought to be elected by those others who have the power of election.

(2) Solemn, when two or three eligible persons are submitted to the Pope or to a superior, so that he may choose one of them for the vacant post.

3. Nomination to bishoprics is one of the general results of Concordats, and finds no place in English-speaking countries.

*cf.*  
Pius IX.  
Constit.  
*Romanus*  
*Pontifex*,  
1873

4. One nominated without the consent of the superior cannot interfere in any way or under any pretext in the spiritual or the temporal administration of the prelacy. He requires confirmation by the legitimate superior, and is bound to present letters of appointment to the body over which he is called to preside. In the case of a chapter such attempt at or reception of administration induces excommunication and the privation of the fruits of benefices with reservation to the Pontiff; and, in the case of the nominee, privation *ipso facto* of all his right to the prelacy or benefice.

## NOTARY

1. A notary is a public officer who has the function of drawing up in writing and authenticating according to the forms prescribed by law, acts, agreements, and affidavits. He is also known practically, as an actuary, *i.e.* from drawing up acts.

2. Of ecclesiastical notaries there are two kinds :

(1) Notaries apostolic, who are appointed by the Holy See. These are of two kinds :

(a) Protonotaries (*q.v.*).

(b) Simple notaries.

(2) Notaries episcopal, who are appointed by the bishop for the use of his diocese.

3. By general custom clerics can act as notaries, and laymen also can act as notaries in ecclesiastical business.

4. Apostolic notaries can act everywhere ; episcopal notaries can only act validly within the diocese except there be a contrary custom, or with leave, or if acting for the benefit and with the consent of those remaining in the territory. They can be examined by the bishop, and if found ignorant or delinquent they can be suspended.

Trent,  
Sess. xxii.  
c. 10, d. r.

5. An instrument validly drawn up by a notary anywhere demands credence.

6. A notary must be born of a lawful marriage, be sufficiently skilled, and not *vitandus*. He should also take an oath on creation, but this is not necessary for the validity of his acts.

7. An ecclesiastical judge should have a notary in all judicial proceedings, whether summary or ordinary ; and a bishop in visiting the persons of a chapter is bound to have a proper notary who is not suspect by the chapter.

8. The Council of Trent, under penalties of privation of office in cases of negligence, orders notaries to expedite, within a month, the acts which appellants require for instituting their appeals.

Sess.  
xxiv.  
c. 20, d. r.

9. A notary on appointment has to swear :

(1) That he will draw up deeds, hiding no truth nor falsifying the documents.

(2) That he will not reveal, saving for a just cause, what has been confided to him in secret.

(3) That he will not draw up any illicit contract.

(4) That he will keep the protocols (*q.v.*) of all documents.

G G 2



- (5) That he will be faithful to those who make him notary.
- (6) That he will not abuse his office for love, fear, or hope.

### NOTORIETY

1. That is notorious and acquires notoriety which either as a *ius* or *factum* passes into the knowledge of all or of the greater part of a community.

2. That is manifest which comes by public or much talked of insinuation or proclamation based on certain knowledge and known authors.

3. Rumour is a particular insinuation or proclamation arising from suspicion alone or from some unknown author.

4. On the other side there are two ways in which a thing can be said to be occult:

(1) When in no way can it be proved.

(2) When it can only be proved with difficulty and by a few persons.

5. That is considered to be secret which is known only to five persons before it is juridically discussed.

6. There are three kinds of notoriety:

(1) *Iuris*, i.e. when one is condemned by the court or confesses.

(2) *Facti*, i.e. when the matter is so clearly proved that by no tergiversation can it be concealed.

(3) *Praesumptionis*, i.e. when the evidence of right is vehemently presumed.

7. Notoriety of fact is of three kinds:

(1) *Facti permanentis*, when it does not require any proof.

(2) *Facti transeuntis*, e.g. killing a man in an open street.

(3) *Facti interpolati*, when it is frequently done with intervals.

8. In notorious facts a judge can proceed without ordinary process, and, once the notoriety be established, he can proceed to sentence without any other proof, and in such a case no accuser, examiner, or witnesses are needed.

9. In notorious cases no appeal is allowed.

### NOVICE

1. A novice is one who, for the sake of the order, as well as for his own, is put through a period of probation before taking the vows of profession (*q.v.*). The novitiate is therefore the canonical entrance to an order or religious institute.

2. The following rules are to be observed in receiving novices :

(1) Novices cannot be admitted as such until they have reached the age of puberty. Trent,  
Sess. xxv.  
c. 17

(2) They must enter freely and not under constraint or fear.

(3) Those who are obviously unfit for the work of the order or congregation cannot be accepted.

(4) Married persons require, after consummation, mutual consent before either can enter an order or religious institute.

(5) Bishops require the leave of the Pope.

(6) Sixtus V., Constit. *Cum de omnibus*, declared to be null the reception of those who are in debt and are under the obligation of rendering accounts. Cf. also  
Clement  
VIII.  
Constit.  
*In summa*,  
2 April,  
1602

(7) St. Thomas declares that children whose parents absolutely require their help cannot enter into religion.

(8) The novice must be a Catholic, unsuspected of heresy, born in lawful marriage, free from infamy, not of Jewish, Mahometan, or heretical descent, and free from all crime for which he would be amenable to the civil court.

3. The Council of Trent ordered that the novitiate should last one whole year from the date of receiving the habit ; and that profession made without such a novitiate is null. The more modern congregations have extended the time of novitiate to two years. Novices *in articulo mortis* can be professed provided they be of lawful age. Should they recover, they must continue as novices for the rest of the period and then be professed over again. Sess. xxv.  
c. 15.  
*De Regul.*

4. The reception of novices belongs *de iure communi* to the prelates of the order, but the laws of each constitution must be observed.

5. The novitiate, with leave and for a just cause, can be passed partly in one and partly in another convent. But the year of probation must be continuous.

6. Novices enjoy all the privileges of the order.

7. Novices, after six months or even three, going out of the monastery with the leave of the superior and returning thither, also in obedience, can be professed at the end of their period. It is also the case if, with permission, the novice leave the monastery for awhile on account of health. The novitiate is essentially a time of living under obedience as a probation. Normally this time should be passed in a monastery ; but, for just causes and if the novice still remains under obedience, it can be passed elsewhere.

8. A novice who has completed his year and then goes out of the monastery can, if he return within three years, make his

profession without undergoing another novitiate provided that his person or estate has not changed meanwhile.

9. A novice who also holds a benefice does not lose this during his novitiate, but another person with a *congrua* (*q.v.*), must be appointed to do the office of the benefice.

10. A novice can revoke a will made before or after his entrance into a order. During the novitiate he can make a new will; and he is perfectly free to dispose of his property according to the laws of justice and charity.

Trent,  
Sess. xxv.  
c. 16,  
*De Regul.*

11. During the novitiate parents, guardians, or the novice himself, can only give to the monastery for the good of the novice what is necessary for food and clothing. The givers and receivers of more incur excommunication.

12. A novice leaving the order takes away anything that is his after paying for board, clothing, and other necessities.

13. The Council of Trent orders that at the close of the novitiate those who are not admitted to profession are to be dismissed from the monastery. This does not affect the case of those who have completed the time of the novitiate and are waiting for the lawful age before being professed.

14. During the period of the novitiate the novice is free to leave whenever he likes; and on the other hand for lawful reasons the superiors are at liberty to dismiss him.

15. For this purpose during the novitiate there are periodical examinations of the novice by the superiors. The Council of Trent orders bishops to examine female novices before the close of their time of probation. The superior is obliged to warn the bishop about a month before the time of profession, so that he may hold, either by himself or by his vicar general, the canonical examination. For the subject of this examination see 2, *supra*.

16. A novice who has worn the habit for a twelvemonth and has completed the year of probation is considered to be professed tacitly if the habit he wears be not openly different from that used by the professed, and if he possess the other qualities necessary for profession.

## NUNS

1. Nuns are women who have made the vows of a religious institute approved of by the Church.

2. There are several kinds of nuns, viz. :

- (1) Those who have made solemn vows. See *VOTUM*.
- (2) Those who have made only simple vows.

3. Nuns who have made solemn vows are of two kinds :

(1) Those who remain under the diocesan jurisdiction.

(2) Those who are under the jurisdiction of the regular prelates of the order. Under this head must also be included those religious women who by their rule have the right to make solemn vows, yet by the force of circumstances are not able to do so. They are told by the Holy See to live as though they had taken solemn vows.

4. Nuns who have made only simple vows are also of two kinds.

(1) Those who are subject to the ordinary. These are either confined to one diocese or exist also in other dioceses.

(2) Those who are under the jurisdiction of a superior general. To this last category must be added such institutes as the Sisters of Charity of St. Vincent de Paul, whom Leo XIII., 25 June, 1882, put in dependence upon the superior general of the Lazarist Congregation.

5. The relation of nuns under solemn vows with the bishop of the diocese has been clearly defined by the canon law of the Church. But those of nuns under simple vows were not defined with that accuracy which respected the mutual rights of both parties. Hence Leo XIII. issued on 8 December, 1900, the *Conditae a Christo*, one of the most remarkable of all those acts of legislation which rendered his pontificate so illustrious. The Pope recognises two classes of these congregations, i.e. the diocesan and the pontifical. While the relations of the former class with the bishop are easily arranged, those of a congregation approved of by the Pope require very delicate handling, so that neither should the bishop inadvertently prevent the intention of the Holy See in constituting the authority of a general superior, nor should this superior trespass upon the jurisdiction of the ordinary which is to be respected when conformable to the holy canons and apostolic constitutions. The unity of direction and of discipline, so necessary for the welfare of a congregation, must be safeguarded : mutual rights should be known and respected ; and the powers of bishops which the Pope desires to preserve intact must not suffer any loss. Therefore the subject of nuns under simple vows requires treatment in two sections which follow that prescribed by the Pope.

#### § 1. Diocesan Congregations

6. The bishop has power, before receiving into his diocese any congregation recently founded, to know and approve of the constitutions and rules so as to see that they contain nothing against faith or sound morals, or contrary to the canons and decrees of

the Pope and that they are conformable to the end of the congregation.

7. No house depending upon a new congregation can be founded regularly except with the consent and approbation of the bishop, who should only give his authorisation after having carefully ascertained who are the persons that ask the permission, whether their sentiments are right and honest, whether they are wise, guided by zeal for the divine glory and by the desire of securing their own salvation and that of others.

8. Bishops, as far as can be, instead of founding or approving a new congregation, should more usefully take from those already approved one suitable for their purpose. In missionary countries a congregation should not be approved which has no fixed and special object, but undertakes any kind of pious and charitable works which are entirely different one from the other.

9. Bishops should not found any congregation which is without the income necessary for the support of its members. They should be very cautious in approving mendicant congregations and also those religious institutes who, day and night, nurse the sick in private houses. A long and severe examination is necessary before a bishop should approve of a new congregation which proposes to open in their house a hospital for men and women or an asylum for sick priests.

10. Moreover they will noways allow religious women to open houses where men and women, coming from outside, can find board and lodging by payment.

11. No diocesan congregation can pass into another diocese without the consent of two bishops, *i.e.* the one of the place which it is leaving, and the other of the place where it desires to enter.

12. Should it happen that a diocesan congregation spreads into other dioceses, it can change nothing in its nature or rules except with the consent of each one of the bishops in whose dioceses it is established.

13. Once approved, congregations cannot be dissolved without grave cause and with the approbation of the bishops under whose jurisdiction they have been placed. But it is lawful for each bishop in his own diocese to suppress such or such an isolated house.

14. The bishop should take information concerning each person who desires to lead a religious life, and also concerning those who have finished their novitiate and wish to take the vows. It is his duty to examine them according to the usage, and if there be no obstacle to admit them to profession.

15. The bishop can dismiss nuns professed in diocesan congregations by dispensing them from their vows, either perpetual or temporary, excepting (as far as concerns the ordinary authority of the bishop) one alone, *i.e.* that of perpetual chastity. But it is necessary to be careful, in dispensing the vows of a religious not to injure the rights of another : *e.g.* if the superiors are ignorant of the measure or oppose it with reason.

16. By virtue of the constitutions the superiors are elected by the religious. The bishop, either personally or by a delegate, presides at the voting ; and according to his conscience he has full power of confirming or of annulling the election.

17. The bishop has the right to visit the houses of every diocesan congregation and to require an account of the way in which virtue is there practised, of the discipline there observed, and also of the expenditure and receipts.

18. It is the bishop's duty to appoint the priests for the religious ceremonies, for confessions, preaching, and also to pass statutes concerning the dispensing of the sacraments.

§ 2. *Pontifical Congregations, i.e. those whose value the Holy See has recognised, or which have been recommended or approved*

19. It belongs to the heads of a congregation to choose candidates and admit them to the habit and to profession. But the bishop always preserves intact the faculty given to him by the Council of Trent of examining, by virtue of his office, female novices before they take the habit and pronounce the vows.

20. It belongs also to the heads of a congregation to organise each house, to dismiss novices and professed after duly observing all that the rules of the institute and the pontifical laws command.

21. The right of distributing offices and promotions, both those which concern the congregation itself and those which are exercised in each house, belongs to the chapters and to the councils of each house.

22. In convents of women, the bishop, as delegate of the Apostolic See, presides, either personally or by deputy, at the assigning of offices in his diocese.

23. The right of dispensing vows, either temporary or perpetual, belongs only to the Pope. No bishop can modify constitutions in so far as they have been approved by the Holy See. Nor can he change or tamper with the *régime* which is established

lawfully, in virtue of the constitutions, either by the superiors of the whole congregation or by those of each house.

24. Bishops have in their dioceses the right of allowing or of forbidding the founding of new houses, the erecting by the congregation of new churches, the opening of public and semi-public oratories, the celebration of worship in private oratories, public exposition of the Blessed Sacrament for the veneration of the faithful. It is also within his province to prescribe solemnities and public prayers.

25. As regards houses of this class that have episcopal closure the bishop preserves all the rights on the subject which are given by pontifical laws. In regard to those houses which have only the partial enclosure, it is within the bishop's province to watch that it be observed regularly and that no abuses creep in.

26. The members of a congregation of either sex are under the jurisdiction of the bishop so far as concerns the internal *forum*. As to the external *forum* they are under him in all that concerns censures, the reservation of cases, absolving of vows not reserved to the Pope, the order of public prayers, dispensations, and the other licences which bishops can grant to the faithful of their dioceses.

27. Bishops, as regards mendicant orders, keep all the rights maintained by the decree *Singulare quidem* of the S.C.E.R. 27 March, 1896.

28. As regards spiritualities, congregations are under the bishops of the dioceses, who appoint and approve their confessors and preachers. In female congregations the bishop appoints both ordinary and extraordinary confessors according to the decree *Quemadmodum* of 17 December, 1890.

29. As regards temporalities possessed by each congregation, the administration belongs to the superior general and to the council. The revenues of each house ought to be administered by their own superiors according to the rule of each congregation. The bishop cannot demand that these accounts should be shown to him.

30. If funds have been left to a particular house for providing for the expenses of worship or for a work of local beneficence, the superior of the house shall administer these funds; but she shall also take the advice of the bishop and show him a perfect deference. The superior of all the congregations cannot hide or keep from the bishop any part of such funds nor use them for other purposes. The bishop can examine whenever he likes the accounts, receipts, and

expenditure, of these funds ; and he will take care that not only the capital be not spent but that the interest be used profitably.

31. Boarding and other schools, orphanages, hospitals, &c. attached to houses of the congregation, excepting such privileges as are accorded by the Apostolic See, are under the care of the bishop in all that concerns religious teaching, purity of morals, pious exercises, the administration of worship.

32. In all congregations under simple vows it belongs to the bishop of the diocese to hold the visitation of the churches, chapels, public oratories, places for hearing confessions, and to decree what seems necessary. The bishop also <sup>1</sup> can inquire whether discipline be observed according to the rule, if sacred doctrine and pure morals be preserved, if the enclosure be kept, if the sacraments be received with frequency and regularity. Should he find matters which deserve reproach, he should first advise the superiors to take the necessary steps to remedy the evil ; if they neglect this he can act. Should there be anything very grave and require prompt action, the bishop shall decide at once and then send his ruling to the Sacred Congregation of Bishops and Regulars.

33. The bishop, principally on visitation, as regards schools, asylums, and the other mentioned establishments shall use the above rights. As regards the material organisations of congregations <sup>2</sup> the bishop shall not interfere except in the administration of funds or legacies intended for the worship, or for works meant for the advantage of the inhabitants of the diocese.

34. In conclusion the Pope does not derogate from any faculties or privileges granted by the Apostolic See, or from any immemorial custom, nor from the rules of any congregation approved of by the Holy See.

35. Pope Leo XIII. by his decree *Quemadmodum* of 17 December, 1890, forbade the manifestation of conscience (*q.v.*), for nuns. He also regulated the use of the sacraments.

36. Superiors are 'not to deny their subjects an extraordinary confessor so often as the needs of their conscience require it and without seeking to find out in any way the reason why their subjects make such a demand, or without showing that they resent it.'

37. As regards either permitting or forbidding Holy Communion, such leave or prohibition belongs solely to the ordinary or extraordinary confessor, the superiors having no right whatever to interfere in the matter saving only the case in which one of their subjects

<sup>1</sup> Not in congregations of priests.

<sup>2</sup> This does not apply to sacerdotal congregations.



has given scandal to the community, since her last confession, or has been guilty of some grievous public fault; and this only until the guilty one has once more received the sacrament of Penance.

38. All are admonished to prepare themselves diligently and to approach Holy Communion on the days prescribed in their respective rules; and when the confessor may judge that it is conducive to the spiritual advancement of any member to receive more frequently, he may give the necessary leave. But whoever obtains from the confessor the leave to receive more frequent or daily Communion is bound to inform the superior of the same; should the latter think that there be just and serious reasons to oppose such frequent communion, she is bound to make them known to the confessor, in whose judgment she must absolutely acquiesce.

39. The observance of these laws is enforced under those penalties incurred by superiors who violate the mandates of the Holy See.

40. The decree *Quemadmodum* in the vernacular must be inserted in the constitutions of each institute, and once a year at a stated time it must be read in a loud and intelligible voice in each house, either in the public refectory or in chapter specially assembled for this purpose.

### THE NUPTIAL BLESSING

1. The nuptial blessing is that contained in the Missal.

2. The Holy Office, 11 August, 1881, has declared that—

‘The nuptial blessing which is given in the Roman missal in the mass *pro sponso et sponsa* is always to be bestowed, at the marriages of Catholics, during the solemnities of the mass according to the rubrics and outside of the closed times, to all those spouses who have not received it for any reason when contracting marriage; even if they ask for it after they have already long lived in matrimony, provided that the woman, if a widow, has not received the blessing in former nuptials. Moreover, Catholic married folk who have not received the blessing at their marriage are to be exhorted to ask for it as soon as possible. But it is to be made clear to them, especially if they be converts or had contracted matrimony validly in heresy, that the blessing belongs to the rite and to the solemnity, but not to the substance, nor is it necessary for the validity.’

3. The nuptial blessing is to be omitted in mixed marriages (*q.v.*) or in marriages with notorious freemasons.

4. The nuptial blessing can only be given by the bishop, or by the parish priest, or by another priest with his leave.

Holy  
Office,  
21 Feb.  
1883

## OATH

1. An oath is a tacit or expressed invocation of God, the infallible Truth, as the witness of anything.

2. There are two kinds of oaths :

(1) Assertory, which affirms or denies.

(2) Promissory, which adds corroboration to a contract or agreement.

3. Both of these oaths may be solemn : that is, with the observance of the accustomed forms ; or simple : that is, without them.

4. There are other divisions of oaths :

(1) Contestative, *i.e.* a simple invocation of God as a witness.

(2) Execrative, *i.e.* imprecating the vengeance of God if the assertion be not true.

(3) Comminatory, *i.e.* threatening to do something.

5. An oath can be made in four ways :

(1) Mentally.

(2) By sign.

(3) By deed.

(4) By word.

6. For a lawful oath three things are required :

(1) Truth.

(2) Judgment.

(3) Justice.

The defect of one of these makes the oath unlawful.

7. In a solemn oath the holy book of the Gospels must be touched, and the oath received by a lawful superior.

8. In England, Ireland, and Scotland the administration of an oath, except by a duly qualified commissioner, in an ecclesiastical judicial inquiry is contrary to the statute of 5 and 6 William IV., c. 62, § 13. But the administration of such an oath is simply declared unlawful ; there is no penalty decreed. It is declared unlawful because 'such justice or other person hath not jurisdiction or cognisance by some statute in force at the time being.' On the other hand, in 'An Act to amend the Law of Evidence, every court, judge, justice, officer, commissioner, arbitrator, or other person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively.' From this it seems clear that in a court of a voluntary association, as

14 & 15  
Vict. c.  
99, § 16

the Church is in the eyes of the English law, the judge has the position of an arbitrator appointed by the consent of parties engaged before him; he can therefore administer an oath. Moreover the appointment of commissioners to administer oaths is in the hands of the Lord Chancellor, who is empowered by the 52 and 53 Victoria, c. 10, from time to time to appoint by signed commission persons being practising solicitors or others fit and proper persons to be commissioners for oaths, and he may make any such appointment. As the English civil law may not recognise as lawful every oath administered in an ecclesiastical court, the only result is that such statements, except they be made before a duly appointed commissioner, will not be recognised as sworn testimony by the civil authority, and no case for perjury will lie.

9. In the United States the administering of the oath to witnesses in an ecclesiastical court is not illegal.

### OBEDIENCE

1. The promise of canonical obedience is made by priests at their ordination.

2. Obedience includes a strict obligation of carrying out whatever the ordinary may command within the limits of his rights. The ordinary is to be withstood if perchance he order anything that is evidently bad; and he may be withstood if he certainly exceeds his power. But in doubtful cases he has a claim to obedience.

3. Canonical obedience to the bishop is derived from his right:

(1) Of teaching, *e.g.* in condemnations, in providing a uniform catechism.

(2) Of commanding, *e.g.* in executing the common law. He cannot forbid what is allowed by law, but he can fill up what is wanting. He can add punishment to the law, and he can forbid something about which doctors dispute whether it fall or not within the canon law.

(3) Of judging, as regards the external or internal *forum*.

(4) Of correcting and punishing, *e.g.* by suspension *ex informata conscientia* and by extra-judicial process, as in visitations.

(5) Of administering according to law the property of the churches in his diocese, of appointing and removing rectors, of creating, dividing, or uniting parishes, &c.

(6) Of passing diocesan laws.

4. Benedict XIV. *Constit. Ex quo dilectus*, 14 January, 1747, says that by force of this promise priests are bound, amongst other

things, not to depart from the service of the churches to which they have been appointed without the leave of the bishop.

5. The obedience promised is a contract, and Benedict XIV. does not regard it as a base and empty formula.

6. The Fourth Council of Westminster says :

‘It is from . . . the protestation of obedience . . . that that x. 7 mutual bond arises between the priest and his own bishop by means of which they are happily united in the faithful discharge of their respective duties, linked together as they are by a common work and mutual assistance in it.’

### OBREPTION

1. Obreption is a vice in a rescript arising from a fraud. It comes from stating in the petition something which is against the truth. Some authors hold that obreption signifies the fraud committed in obtaining a grace or concession from a superior by withholding the truth. *Obreptio fit veritate tacita*. But others hold that it is the false statement itself.

2. Obreption is often confounded with subreption (*q.v.*), and produces the same effects.

### ORACULA VIVAE VOCIS

1. *Oracula vivae vocis* are concessions of privileges or favour bestowed by the Pope by word of mouth without writing.

2. Some of these pontifical oracles are authentic, some are not.

(1) Authentic oracles are those which, lest they should be forgotten, and in order that they may be of use *in foro externo*, are at once reduced to writing and given credit to by those who *ex officio* can authenticate an instrument (*q.v.*).

(2) Non-authentic oracles are those which, by the neglect of the petitioner or for any other cause, are not reduced to writing in the prescribed form.

3. For the internal *forum* graces and privileges granted *viva voce*, whether authentic or not, have the same value ; for the substance of a privilege is not the writing, but the consent.

4. Certain Popes, as Gregory XV. and Urban VIII., revoked all such oracles with exceptions. This, of course, only applies to what they revoked, not what has been granted since in the same manner.

## ORATORY

1. An oratory is a place adapted for prayer, and for the celebration of mass in particular.

2. Oratories in which mass can be said are of three kinds :

(1) Public, which are erected by the authority of the bishop and dedicated perpetually to God. They must have an entrance by a public door from the common road.

(2) Semi-public.

(3) Private, which are within the house, and have no public entrances. This kind of oratory can only be erected by a grant from the Holy See ; and the permission contains certain clauses as to the recognition and approbation of the ordinary, and as to the days when mass may not be celebrated.

3. The privilege of a private oratory is personal ; therefore the domicile may be changed. Such phrases as *In privati domus tue solitae habitationis in dioecesi N. existentis oratorio* are demonstrative, not restrictive.

4. The approbation of the ordinary is necessary wherever the domicile be set up, even if it be in other parts of the same diocese. The object of the approbation is to secure that due reverence be observed. The oratory must be decent and free from all domestic uses. No bedroom or place for sleeping is allowed to be over the place of the oratory. The locality being fitting, and having all the necessary arrangements demanded by the Church, the bishop cannot refuse his approbation, for he has no power to limit the concession of the Pope.

5. After the first visit and approval, the bishop *de iure* cannot visit the oratory again except upon accusation or denunciation.

6. A bishop cannot grant leave for celebrating masses in private oratories, not even for the purpose of giving Viaticum ; but he can erect a public oratory in a private house under the usual conditions.

7. The privilege, being personal, dies with the owner, but not with the giver.

8. Only secular priests approved by the ordinary, or regulars approved by their superiors, are allowed to celebrate mass in a private oratory. The leave of the *parochus* is not necessary, for he is not an ordinary.

9. The privilege is granted without prejudice to the rights of the *parochus*. Hence Communion cannot be given without the leave, expressed or tacit, of the bishop or *parochus* where this can be easily procured.

10. The days that are generally excepted are Christmas, Easter, Whitsuntide, and some other of the greater feasts. The S.C.R., 17 November, 1607, says that these are the Epiphany, the Annunciation, the Assumption, SS. Peter and Paul, and, by another decree, 17 February, 1685, the feast of the patron of the place. But the days are generally specified in the grant.

11. If the grant be limited to the person and his family, by this latter is understood those who are *commensales*—not the servants, except those who are necessary. The actual presence of the owner is not necessary. Guests are temporary *commensales*.

12. In a diocesan bishop's house the oratory is public, so far as the precept of hearing mass is concerned.

13. Generals and provincials of orders of men can erect in their houses private oratories. which enjoy the privileges of public ones.

### ORDER

1. That there is in the Catholic Church a hierarchy instituted by divine authority, and consisting of bishops, priests, and ministers, is a dogma of faith. Cf. Trent,  
Sess. xxiii.  
26

2. Many parts of the subject of the sacrament of Order, *e.g.* each order itself, the bishop, the cleric, the title, the tonsure, and the irregularities, all enter into the range of canon law as well as of theology. These are all treated under their respective headings.

### ORDINATION

1. The laws which regulate ordination are four in number :

(1) The ordination should be done in the lawful order, and not *per saltum*.

(2) It should be done with the lawful intervals or interstices (*q.v.*).

(3) It should be done at the lawful times. The tonsure can be lawfully given any day or hour; minor orders on Sundays and holy days of obligation, and it is fitting that they be given during mass; the sacred orders on the Saturday in the Ember week, on the Saturday before Passion Sunday, and on Holy Saturday, and always during mass; the episcopate on Sundays or feasts of the Apostles, and at the hour of terce. Special faculties are required for ordaining out of these legal times.

(4) While the tonsure and minor orders can be given in any honest place, sacred orders should be conferred in the cathedral, S.C.C. 20  
Nov. 1592

H H

and in the presence of the chapter. If it be a general ordination, the S.C.R. 16 September, 1747, orders the ceremony to take place in the cathedral ; if it be not a general ordination, the bishop can hold it in any church, and even in his own private chapel.

2. The ordination should be preceded by the canonical announcement made three times by the parish priest of the ordinand to sacred orders one month before the date of the ceremony ; and the people should be warned if they know of any reason why the person named should not be ordained that they are bound to declare the same as soon as possible, either to the parish priest or to the bishop.

3. The First Council of Westminster decreed :

‘ It is a pre-eminent object of pastoral solicitude to train up and establish in the Church, as the ministers of Christ and the dispensers of God, upright and faithful men distinguished by every kind of virtue. Wherefore, as regards the promotion and ordination of clerics, we enjoin that what follows be observed carefully.

(1) ‘ Let bishops hold ordinations as far as possible at the times prescribed by the law, either in their cathedral church or in the churches or chapels of the seminaries. Let them be held with the greatest solemnity, and with all the rites prescribed in the Roman Pontifical.

(2) ‘ As among those to be ordained there are frequently some who, being converts from heresy or born of convert parents, or from other causes, have contracted irregularity, the bishop should inquire diligently on this point, so that if any one of those about to be promoted be found noted with such a taint he may be freed from it before ordination. It seems desirable also to petition our most holy Lord that the ordainer in seminaries common to several bishops, may have faculties to absolve from irregularity even those who are not his subjects, with the consent of their ordinaries. And since a doubt arose whether the faculty of ordaining out of the usual times could be exercised in favour of the *alumni* of such seminaries, the S.C.P.F. published a decree [21 April, 1851] approved of by his Holiness by which faculties are granted to the bishops, in whose dioceses such colleges are situated, of ordaining out of the usual times *alumni* not their own subjects, with the previous consent of their respective ordinaries.

(3) ‘ Those about to be ordained must be strictly examined by examiners on the order they are about to receive. Those to be promoted to the tonsure and minor orders must be examined in literature ; those about to receive the subdiaconate, in at least one treatise of sacred theology ; those about to be advanced to the

diaconate, in two; and those to be raised to the priesthood, in three treatises at least, or, if it seem proper, in the whole of dogmatic theology. If practicable there should also be proclamations made beforehand of those to be ordained.

(4) 'As far as possible the interstices should be duly observed, so that each one before he be raised to a higher grade may have opportunity of frequently exercising the order already received, and may thus maturely learn the rubrics.

(5) 'As to the sum required for the decent maintenance of persons promoted to the subdiaconate under the title of patrimony the fathers are of opinion that no one ought to be ordained who has not a legally sure income of at least 40*l.* sterling. On this matter the *Institution* XXVI. of Benedict XIV. and the rule there laid down should be observed.

(6) 'But let those who are ordained under the title of patri- xxi.  
mony understand that they are not at liberty to leave their own diocese without the consent of the bishop, to whom at the ordination they promised reverence and obedience. For, as Benedict XIV., *Constit. Ex quo dilectus*, declares, this solemn promise of obedience and reverence we do not consider a mere empty form . . . nay, we freely acknowledge that a priest by force of this engagement is bound, among other obligations, not to quit the service of the church to which he belongs by his ordination without the leave of the bishop.'

**PALL.** See METROPOLITAN, 22

## PARISH

1. A parish can only be erected by the Pope or the bishop. It is an act of ordinary jurisdiction.

2. There is required for the canonical erection of a parish :

(1) The authority of the competent superior.

(2) A certain district with certain boundaries determined by the bishop.

(3) One perpetual rector with cure of souls and ordinary power in the internal *forum*.

3. The Council of Trent decrees :

'Also in those cities where the parish churches have not any certain boundaries, neither have the rectors thereof their own proper people to govern, but administer the sacraments to all indiscriminately who desire them, the Holy Synod enjoins on all bishops that

*Sess. xxiv.  
c. 13, d. r.*

H H 2



for the greater security of the salvation of the souls committed to their charge, after dividing the people into fixed and proper parishes, they shall assign to each parish its own perpetual and particular parish priest who may know his own parishioners, and from whom they lawfully may receive the sacraments ; and the bishops shall make such other provision as may be more beneficial according as the character of the place may require. They shall also take care that the same be done as soon as possible in those cities and places where there are no parish churches ; any privileges and customs, even though immemorial, to the contrary notwithstanding.’

### PAROCHIAL RIGHTS

1. Parishioners are bound to offer their children for baptism to their own parish priest.

2. The Easter precept must be fulfilled in the parish church.

3. The sacrament of Extreme Unction is to be had from the parish priest.

4. Funerals should take place in the parish church. But if the family grave be elsewhere, or if the deceased person had made other arrangements for his burial, the parochial rights are to be maintained ; and one fourth of the funeral fees belongs *de iure* to the parish priest of the deceased. This fourth is to be claimed from the church that received the fees, not from the family.

5. Marriages belong to the parish priest, and no one, except the bishop or those with ordinary jurisdiction, can perform the nuptial ceremony in his church without his leave. Where the decree *Tametsi* binds, his presence is necessary for the validity of the contract.

6. The payment of the tithes or their equivalents, where such is the custom, is due to the parish priest.

Sess. xxii.  
*De observand.*  
7. Bishops are directed by the Council of Trent to warn the faithful to go often to their parish churches, especially on Sundays and festivals.

Benedict XIV.  
Constit.  
*Etsi minime*  
8. The people should not be drawn away from their parish churches by the celebration of solemnities in other churches.

9. Masses should not be celebrated before the parochial mass in country churches near the parish church, nor in the churches of regulars during the time of the parochial mass.

10. The parish priest has the right to be consulted before his

parish be divided, and before a monastery be erected within his parish.

### PAROCHIAL VICARS

1. There are two kinds of parochial vicars :

(1) Perpetual : that is, one who is canonically instituted by the authority of the bishop for the service of some church in place of the principal rector and with an assigned portion of the fruits.

(2) Moveable : that is, appointed for a time and at the will of the appointer.

2. The institution of perpetual vicars belongs to the ordinary of the place, although regularly it should be made at the presentation or nomination of the principal rector. They can only be appointed in benefices with cure of souls.

3. The vicar has a right to a fixed stipend to be arranged by the bishop according to the circumstances of times and places. Once fixed the stipend cannot be lessened.

4. A perpetual vicar is a true beneficed clerk ; as such a vicariate is equivalent to a parochial benefice and has its obligations and rights.

5. A moveable vicar is not beneficed and only receives a salary.

6. The nomination of certain kinds of vicars, moveable *ad nutum*, belongs to the principal rector ; and the bishop only approves and licenses.

Ferraris,  
*Vicarius  
Parochi-  
alis*, n. 46

### PAROCHUS

1. A *parochus* is so called because he is the priest of the parish (*q.v.*). They are called also rectors because they rule the flock, and 'curates' because they have the cure of souls. A *parochus* can be defined as one lawfully deputed to administer, by obligation and in his own name, the Word of God and the sacraments to a certain number of the people of a diocese who, in turn, are sometimes obliged to receive from him the sacred rites of religion.

2. For a *parochus* one should be elected who is fit, who will reside in his parish, and who himself will exercise the cure of souls.

#### § 1. Qualifications

3. As regards fitness, the following points concerning the election of a *parochus* must be considered, viz. maturity of age, gravity of morals, and knowledge of letters.

Sess. xxiii.  
c. 6, d. r.

4. The Council of Trent ordains that the canonical age for promotion to the office of parish priest is twenty-five years at least begun.

5. As regards morals and knowledge these qualifications are made the subject of the *conkursus* (q.v.) before the synodal examiners (q.v.).

6. Of those who have passed the *conkursus* the bishop must elect and promote the more worthy.

7. A *parochus* in an exempt church has to be approved and examined by the bishop.

8. A bishop cannot examine or require approbation for a *parochus* whom he has already passed as suitable, unless he have new proof of a want of the knowledge necessary for fulfilling the duty. But he can, if necessary, examine those who were approved by his predecessor; and, if he find them wanting, he can give them coadjutors.

Sess. xxi.  
c. 6, d. r.

9. The Council of Trent decreed:

‘Forasmuch as illiterate and unskilful rectors of parish churches are but little fit for the sacred office, and others by reason of the turpitude of their lives rather destroy than edify, the bishops, as the delegates of the Apostolic See, may depute to the said illiterate and unskilful rectors, if they be otherwise of blameless life, coadjutors or vicars for the time being and assign the same a part of the fruits for their sufficient maintenance, or provide for them in some other manner, setting aside any appeal or exemption whatsoever. But those who live shamefully and scandalously they shall, after having first admonished them, restrain and punish; and if they shall still continue incorrigible in their wickedness the bishops shall have power to deprive them of their benefices according to the constitutions of the sacred canons, setting aside every exemption or appeal whatsoever.’

Vol. i.  
tit. 10,  
form. 15,  
n. 3

10. On this Monacelli remarks that bishops should do this but rarely, and with great care, and only after there has been defamation of unskilfulness. Pignatelli allows *tota imperitia* or error in administering the sacraments as a sufficient cause for appointing coadjutors (q.v.).

11. A *parochus* has ordinary jurisdiction in the internal *forum*, but he has none in the external tribunal. Hence he cannot pass censures on his people.

12. A *parochus* may be allowed to have dwelling in his house female relatives of the first or second degree of consanguinity, or of the first degree of affinity, besides female domestics, who should

not be less than forty years of age unless they be his relatives and of good repute.

## § 2. Residence

13. A *parochus* is bound to personal residence (*q.v.*). The Council of Trent refused to declare that residence on the part of those who had cure of souls was of divine right ; but it said :

Sess. xxiii. c. 1, d.r. ; and cf. Benedict XIV. *De Synodo*, vii. c. 1, n. 4

‘It is by divine precept enjoined on all to whom the cure of souls is committed to know their own sheep.’

Hence all parish priests, whether moveable or immoveable, are bound to residence by canonical law.

14. He can have helpers, but the chief part of the work and the responsibility for the whole is in his hands. When called for, by name, to visit the sick he is obliged to go.

15. A *parochus* is allowed by the Council of Trent to be away from his cure for two months out of the twelve. But he cannot avail himself of this law without the leave of the bishop ; and the S.C.C. has decided that he cannot be absent even for a week without the bishop’s leave granted in writing.

16. The bishop cannot grant leave for a longer absence than two months except for grave reasons such as Christian charity, urgent necessity, due reverence to be paid to superiors, or the evident utility of the Church or State. Hence the bishop cannot give leave for a parish priest to be absent for a longer period than two months on the plea of continuing his studies.

17. The Council of Trent has decreed concerning absence :

*Ut supra*

‘Whensoever they are absent for a just cause that has first been made known to and approved of by the bishop they shall leave, with a due allowance of stipend, a suitable vicar to be approved of by the ordinary. And they shall not obtain leave of absence, which is to be granted in writing and gratuitously, for a longer period than two months except for some very weighty cause.

18. A bishop cannot refuse canonical leave of absence without just cause, otherwise an appeal lies to the metropolitan.

19. During a time of pestilence the *parochus* is bound to reside in his cure.

20. Unless by particular law to the contrary, a *parochus* may be absent, for a lawful cause, for one or two days without licence, provided he leave a suitable vicar. This is the universal custom. Many canonists hold that he can be absent in this manner for six or seven days.

S.C.C.  
12 May,  
1629

21. On account of the law of residence and incompatibility of office a parish priest of a rural parish cannot be a vicar general (*q.v.*) or a vicar capitular (*q.v.*).

22. A *parochus* who is absent without leave loses his right *pro rata* to the fruits of his benefice, and is bound to make restitution to the church or to the poor, even before any sentence be given by the judge.

23. A parish priest can be compelled, by the remedies provided in the law, to keep residence.

24. Precedence among parish priests is ordered by the prerogatives of their churches. In processions they precede all other rectors and priests.

### § 3. *Preaching*

Sess. v.  
c. 2, d. r.

25. The Council of Trent decrees that parish priests 'shall at least on the Lord's day and solemn feasts, either personally or, if they be lawfully hindered, by others who are competent, feed the people committed to them with wholesome words according to their own capacity and that of their people by teaching them the things which are necessary unto salvation, for all to know, and by announcing to them, with brevity and plain speaking, the vices which they must avoid and the virtues which they must pursue that they may escape everlasting punishment and obtain the glory of heaven . . . Wherefore if after being admonished by the bishop they shall neglect their duty for the space of three months let them be compelled by ecclesiastical censures or otherwise at the discretion of the said bishop.'

26. A *parochus* is forbidden to admit to preach in his church those, even bishops, who are not approved of by the ordinary. But he can give leave to anyone who is learned and known, even if he be a regular, to preach twice or thrice in his church without the bishop's leave, unless there be a local law to the contrary.

27. A *parochus* is warned not to quote modern authorities and learned writers, especially if living, and he should use especially in his sermons the *Catechismus Romanus*, which will provide him with the matter for solid instruction and genuine piety.

28. Pius X. *f.r.*, by his Encyclical of 15 April, 1905, strictly orders that in every diocese all parish priests and in general all who have the cure of souls shall give, on every Sunday and feast-day throughout the year, without exception, an hour's instruction from the Catechism to the children; and, besides the usual homily on the Gospel delivered at the parochial mass on all days of obliga-

tion, they must explain in an easy style the Catechism to the people, but not during the hour in which the children are taught. This obligation would seem to be fulfilled, in places where it is the custom to have evening services, by making the discourse a catechetical instruction based on the Catechism of the Council of Trent, the use of which the Pope orders. See CHRISTIAN DOCTRINE.

#### § 4. Other Duties

29. On all Sundays and feasts the *parochus* must say mass in his own church and nowhere else. He is bound *ex iustitia* to say this mass *pro grege* (*q.v.*).

30. A *parochus* can obtain from the bishop the faculty of duplication (*q.v.*) on account of the scarcity of priests.

31. A parish priest can give leave to other priests to administer the sacraments in his church except the sacrament of Penance (*q.v.*), which requires the leave of the bishop.

32. Having in the internal *forum* ordinary jurisdiction over his people, a *parochus* can hear the confessions of his parishioners anywhere, even outside of his own diocese; for confession is an act of voluntary jurisdiction which can be exercised anywhere on one's own subjects.

33. He is bound *ex iustitia* to administer the sacraments to his flock in times of great necessity, even with certain peril to his own life.

34. A *parochus* is bound to give instruction in Christian doctrine to the children and ignorant persons of his flock.

35. Perpetuity is not of the essence of the parochial office, neither is the holding of a benefice. The Council of Trent decreed on this point that bishops 'for the safer weal of souls should assign to each certain flock, constituted into a proper parish, their own perpetual and peculiar parish priest unless they provide in another more useful way according as the quality of the place demands.' Hence although perpetuity is the mind of the Church as regards parish priests, yet in individual cases, *prout loci qualitas exegerit*, it is not essential. It is the necessity of the individual parish, not of the diocese, that allows the exception.

Sess. xxiv.  
c. 13, d. r.

### PARTICULAR LAW

1. Particular law is not opposed to common law, but supplies what is not touched upon by general legislation.

2. Particular law only obliges those for whom it is made.

3. Particular law is to be found—

(1) In special decrees of the Holy See addressed to particular places, persons, and causes.

(2) In provincial and national synods.

(3) In diocesan synods and in extra-diocesan episcopal laws.

4. Particular laws as regards promulgation, intention, abrogation, &c. come under the general teaching concerning law (*q.v.*).

### PASCHAL PRECEPT

1. The Paschal precept is that all the faithful of either sex, having reached the years of discretion, are bound to communicate at Easter. *See* LATERAN DECREE.

2. The Paschal precept is to be fulfilled in one's parish church.

3. The period for fulfilling the precept varies in different countries. The time fixed by common law is from Palm Sunday to Low Sunday.

Sess. xiii.  
can. 9

4. The Council of Trent says :

'If anyone denieth that all and each of Christ's faithful of both sexes are bound, when they have reached the years of discretion, to communicate every year, at least at Easter, in accordance with the precept of Holy Mother Church, let him be anathema.'

S.C.C.  
2 March,  
1619; and  
9 June,  
1644

5. Those who have no domicile can make their Easter communion anywhere even in the churches of regulars who otherwise, on Easter Sunday, are not allowed to administer communion to seculars even if these have already obeyed the precept.

6. Those who do not fulfil the Paschal precept incur excommunication *sententiae ferendae*. Hence if a man die before the sentence has been declared, unless his case be notorious or synodal laws obtain to the contrary, he can receive Christian burial.

7. The date of Easter is not *ad terminandum* but *ad urgendum*.

### PATRIMONY

1. Patrimony as a title (*q.v.*) for ordination is the property other than coming from the church, of a sure and interest-bearing nature, deemed by the bishop sufficient for decent support.

2. It is an exceptional title, and is allowed, as it were, by dispensation should the bishop deem it necessary or convenient that one so circumstanced should be admitted to ordination.

3. If the patrimony be lost and no other be substituted, the

priest is not, therefore, suspended ; but ordinaries are bound to insist upon those ordained obtaining some other title as is provided for in the sacred canons.

S.C.P.F.  
1 Sept.  
1856

4. The First Council of Westminster decreed :

‘ As to the sum required for the decent maintenance of persons promoted to the subdiaconate under the title of patrimony, the fathers are of opinion that no one ought to be ordained who has not a legally sure income of at least 40*l.* sterling. On this matter the *Instructio* XXVI. of Benedict XIV. and the rule therein laid down should be observed.’

5. As patrimony comes from a non-ecclesiastical source it is not under the direct jurisdiction of the bishop ; and one, who has his own patrimony, can hold benefices which he can freely use for his own honest support according to the mind of the Church. The ecclesiastical labourer is worthy of his ecclesiastical hire.

### PATRON

1. A patron is one who has a recognised canonical right of nominating or of presenting a cleric to a vacant benefice (*q.v.*).

2. A patron may be either a corporation, such as a chapter, or an individual who may be an ecclesiastic, or a lay person, male or female.

3. The patron has well-defined rights of patronage (*q.v.*), and these the common law respects and enforces.

4. The patron is looked upon by the Church as a benefactor to whom gratitude is both due and to be paid according to her laws.

5. The patron can bequeath his rights or they descend in due course to his heirs.

6. The patron has the serious obligation of presenting to the bishop, not only one who is free from all canonical defect, but the best man ; and, unless there be canonical grounds, the bishop is bound to give collation (*q.v.*) of the benefice to the person presented by the patron.

### PATRONAGE

1. Patronage is the canonical right of a patron (*q.v.*). It may be defined : The right or power of nominating or of presenting a cleric for promotion to an ecclesiastical benefice ; or, more fully, a right in a church, honorific, burthensome, and useful, belonging to some one because, with the consent of the ordinary, he has



built, founded, or endowed it, or because it was done so by his ancestors.

2. Three terms in the above definition have to be noted especially :

(1) **Honorific** : the Church recognises that honour is due to the patron.

(2) **Burthensome** : the patron is bound to defend his church, and, when necessary and possible, to repair it.

(3) **Useful** : that is to say, to the patron himself ; for should he become poor his church is obliged, from superfluous funds, to support him rather than any other poor person.

3. There are three kinds of patronage recognised in law, viz. :

(1) **Hereditary** : that which passes to any heir even if he be not of the same blood as the original patron.

(2) **Family** : that which can be exercised only by members of a particular family.

(3) **Mixed** is that which is left to the family or to heirs.

4. Family patronage is proved :

(1) By the terms of the foundation in which the founder leaves the patronage to the descendants and successors of his kin, family or house.

(2) From the fact that presentations (*q.v.*) are made by the men of a family, women being excluded while there are any men.

(3) When in every presentation mention is always made of the family and not of the heirship.

(4) By presentation made by father and sons simultaneously.

(5) By a claim allowed during forty years.

(6) By a sentence of the ordinary recognising a family right.

(7) By tradition, inscriptions, &c.

5. Hereditary right is proved :

(1) By the deed of foundation in which the founder reserves the right of patronage to himself and heirs without mention of kinship.

(2) If during the lifetime of a father, the sons have no right to take part in the presentation.

(3) If several presentations have taken place on the hereditary title.

(4) Hereditary right is to be presumed unless the contrary is proved by the act of foundation.

6. Patronage is divided into :

(1) **Active**, which is the right itself that the patron has of presenting anyone to the benefice. This is personal and is independent of anything ; or it is real : that is, annexed to the possession,

say, of a house or estate the owner of which becomes *ipso facto* patron.

(2) **Passive**, which is the right possessed by the members of the family, if otherwise fit, of being necessarily presented by the patron.

#### 7. Patronage is :

(1) **Ecclesiastical** : that is, when the benefice was founded and erected from ecclesiastical property ; or, if founded from lay property, that which was, from the beginning, or by will, gift or in any other way, transferred to a church or to a chapter or to any ecclesiastical person, dignity, or benefice. Thus the patronage may be given to the chapter of a diocese ; and then the benefice becomes of ecclesiastical patronage.

(2) **Lay** : that is, patronage which belongs to laymen or to clerics, not on account of a dignity or benefice but by reason of patrimony (*q.v.*).

(3) **Mixed** : that is, which belongs to a cleric partly and partly to a layman, the one by hereditary right, the other by reason of a benefice.

#### 8. Ecclesiastical patronage can be proved in various ways :

(1) By the foundation and endowment from ecclesiastical goods. Hence if the church be founded by a cleric, who has no patrimony or any source of income save his benefice, the patronage is clearly ecclesiastical.

(2) When the patronage belongs to a monastery or to a church or chapter.

(3) When it is left to a religious.

(4) When, by the foundation, a church, even if built by lay people, is left to ecclesiastical patronage.

(5) When it is left to a confraternity.

#### 9. Lay patronage is proved :

(1) When the benefice is founded by lay money and the presentation belongs to laymen.

(2) When the founder declares that he makes the patronage lay.

(3) When the ordinary, by sentence, institutes a cleric on lay presentation.

(4) When a layman is in quasi-possession of the rights of presentation.

(5) By a pontifical declaration and acknowledgment.

(6) When the nomination is left to a corporate body of laymen and the election of one of those named is left to clerics.

**10. Mixed patronage is proved :**

(1) When the foundation is made from goods ecclesiastical and lay.

(2) When the foundation is made from ecclesiastical goods and the endowment comes from lay benefactions, or *vice versa*.

(3) When the founder by deed witnesses that the patronage belongs to both.

(4) When, by any other title, it belongs partly to clerics and partly to laics.

**11. Patronage is acquired in one of three ways :**

*Patronum faciunt dos, aedificatio, fundus,*

and any one of these ways is sufficient to acquire the rights of patronage.

(1) *Fundus* : that is, the ground. Anyone who provides the land for building a church receives from the law rights of patronage.

(2) *Aedificatio* : that is, the building. Anyone who, with the consent of the ordinary, builds a church at his own expense or, with the same consent, restores a church, wholly destroyed, which the original builder or his heir is unwilling to rebuild receives from the law the rights of patronage. But the mere restoration or repairing of a church that is not wholly destroyed gives no rights.

(3) *Dos* : that is, the endowment. He who endows a church with an income sufficient for its upkeep receives in return rights of patronage.

Sess. xiv.  
c. 12

**12. The Council of Trent decrees :**

‘No one, moreover, of whatsoever ecclesiastical or secular dignity can or ought to obtain or acquire a right of patronage for any other reason whatever but that he has founded and built anew a church, benefice, or chapel, or has competently endowed, out of his own proper and patrimonial resources, one already erected which, however, was without a sufficient endowment. But in case of such foundation or endowment the institution (*q.v.*) thereof shall be reserved to the bishop and not to any other inferior person.’

**13.** As regards the endowment, he who assigns a competent endowment to a church, already built and without an income, has the rights of an endower. The annual income must be sufficient for the support of the ministers of the church, for vestments, lights and other necessities. He who gives an income

insufficient for all these purposes is a benefactor indeed, but not a patron. Should the old endowment be lost and the patron do not renew his gift, the one who re-endows becomes patron in his stead.

14. When one and the same person gives the ground (*i.e.* founds), builds and endows a church, he alone acquires the rights of patronage. When several persons concur, *e.g.* when one gives the land, another builds and a third endows, they all acquire *in solidum* the rights of patronage, and all become joint patrons. But this law does not apply, except by particular apostolic privilege, to the right of appointing a prelate to a collegiate or monastic church.

15. Besides the above three ways of acquiring patronage, two others are in force :

(1) By privilege from the Pope.

(2) By prescription (*q.v.*).

16. The Council of Trent says :

‘ Even as it is not just to take away the lawful rights of patronage, and to violate the pious intentions of the faithful in the institution thereof, so also neither is it to be suffered that under this pretext ecclesiastical benefices may be reduced to a state of servitude as by many is done impudently. In order, therefore, that what reason requires may be observed in all things, the holy synod ordains that the title to the right of patronage shall be (*derived*) from a foundation or an endowment, which (*title*) shall be shown by an authentic document and the other (*proofs*) required by law, or, also, by repeated presentations during a period so remote that it exceeds the memory of man, or otherwise according as the law directs. . . . Furthermore it shall be lawful for the bishop to reject the persons whom the patrons have presented if they be not fit. But if the institution belongs to inferiors (*ecclesiastics*) they (*the presented ones*) shall nevertheless be examined by the bishop pursuant to what has been elsewhere ordained by this holy synod ; otherwise the institution made by these inferior (*ecclesiastics*) shall be null and void.’

Sess. xxv.  
c. 9, d. r.

N.B.—On this decree three points should be observed :

(1) ‘ Repeated presentations ’ mean, according to most canonists, that two presentations are sufficient.

(2) ‘ Exceeds the memory of man.’ This time immemorial is held to be a period of forty years when there is no suspicion of usurpation.

(3) ‘ Foundation.’ Most canonists hold that the term is

employed in a general sense, and means either giving the land (*fundus*) or building.

17. Patronage can be transferred to another in four ways :

(1) By succession : that is, to blood heirs.

(2) By donation. If the donation be made from laymen to a layman or to a cleric in his own name, the consent of the bishop is required necessarily. But if the donation be made to a monastery or to a cleric in the name of the Church or his office or dignity, the episcopal consent is not needed. Should the donation be from one church to another church the consent is required, for this is a species of alienation (*q.v.*). But no consent is wanted in cases where one patron gives up his rights to his co-patron. When, by law, the bishop's consent is necessary, it must be expressed, and cannot be presumed.

(3) By exchange. When one estate is exchanged for another the transfer of the rights of patronage does not require the bishop's consent. When one patronage is exchanged for another the consent of the ordinary is required.

(4) By sale. This does not mean that the patronage, *per se* and taken alone, can be sold. It cannot be sold validly or lawfully ; and the person who attempts to sell incurs excommunication on account of the simony (*q.v.*). But if the property to which the patronage is attached be sold, it passes by sale, provided that the price of the property be not thereby increased.

18. The rights of patronage may be lost in various ways, *e.g.*

(1) If the church be destroyed.

(2) If the cause of patronage cease.

(3) If there be no heirs then the church becomes free.

(4) By non-use, *i.e.* if the patron, who is not lawfully prevented, do not exercise his right for the vacancies.

(5) If the church become collegiate or monastic.

(6) If, with the consent of the patron, the church or benefice become incorporated with another.

(7) By free remission made by the patron.

(8) If a patron become a heretic, schismatic, or apostate.

(9) If a patron usurp the goods of the benefice.

(10) If he sell the advowson or simoniacally acquire it.

19. It is to be noted that the Church fully recognises the rights of lay patronage ; for by this recognition of their bounty, the laity are induced to found or to endow churches. Hence, these rights being given for true and wise reasons, they may be exercised. But it must be borne in mind that patronage is

*Cf.*  
Pius IX.  
Constit.  
*Apostolicar*  
*Sedis*, ii. 8

concerned solely with benefices (*q.v.*), and these require canonical sanction.

20. Lay patrons can be either men or women. Those who have not yet come to the use of reason exercise their rights through their guardians.

21. Patrons by hereditary right are numbered by the *stirps*, not by heads.

22. Patrons cannot demand any temporal thing from the one they presented to the benefice unless it be stipulated and imposed in the foundation deed.

23. Lay patrons have only four months in which to present a person to the bishop. If they fail, the collation devolves *pro hac vice* to the bishop.

24. Ecclesiastical patrons have *de iure* six months for presentation; and failing, the right *pro hac vice* devolves upon superiors, each at the limit of six months from the time of knowledge.

25. A bishop can extend the period in favour of patrons; but not beyond six months. He cannot, on the other hand, shorten the time.

26. Mixed patrons have six months in which to present.

27. The period is to be reckoned, not from the vacancy of the benefice, but from the patron's certain knowledge thereof. His lawful hindrance or absence does not deprive him of his rights.

28. An ecclesiastical patron, having once presented a fit person, cannot change or present another even as an alternative choice. The bishop is bound to institute the former.

29. A lay patron can present another as an alternative choice to be left to the bishop. He can only change his presentation once. Many canonists hold that he can change *cumulative* several times; for this is to the advantage of the Church.

30. If a patron unknowingly presents once or twice an unsuitable or unworthy person he can go on presenting others; for *sine culpa nemo est privandus iure suo*.

31. The Pope, as supreme administrator of the goods of the Church, has absolute power to dispose of all benefices; for *omnis res per quascumque causas nascitur, per easdem dissolvitur*. But it is not usual for the Pope to dispose of the benefices of laymen against their will; for this would hinder them from founding others, and because 'it is not just to take away the lawful rights of patrons and to violate the pious intentions of the faithful in the institution thereof.' Therefore the Pope is never thought

*Cf. Trent, loc. cit.*

to wish to derogate from the law of lay patronage unless he clearly expresses it. Not so, however, with ecclesiastical patronage. Here there is no taking away of lawful rights or violation of pious intentions ; for the patronage belongs to the Church, and the Pope can, without injury to anyone, dispose of it as he wills by simple concession, union, or reservation.

32. A patron can present a layman under the condition that he become a cleric within the legal time of the vacancy.

33. A patron cannot present himself to a benefice ; but he can ask the bishop, if found worthy, to present him, giving the bishop *pro hac vice* the right of presentation.

34. A patron can present his son or a relative.

35. An ecclesiastical patron is bound to present the most worthy to a parochial benefice ; a lay patron is bound to present only a worthy person. Hence when a lay person presents a fit person for a benefice with cure of souls the bishop is bound to institute him even if he think another more worthy.

36. An ecclesiastical patron who knowingly presents one unworthy is deprived *pro hac vice* of the right of presentation, which falls to the ordinary. If he present such a one unknowingly he has another six months wherein to present a fit person.

37. A lay patron knowingly presenting an unworthy person is more probably deprived *pro hac vice* of the right. This is the opinion more commonly held. Unknowingly presenting an unworthy person does not deprive the lay person of his rights.

38. If several are presented by the patron, and all are of equal worth, the bishop can choose whom he wills ; but if several of unequal merit be presented, the ordinary is bound to choose the best.

39. Should several patrons, acting conjointly, not agree among themselves within the four or six months respectively as to the person or persons to be presented, the right *pro hac vice* lapses to the bishop.

40. In case of a dispute between a bishop, striving for the liberty of a church, and a patron, asserting his rights, if the period of four or six months respectively expire, the bishop cannot institute anyone at his will, but must put in an *Oeconomus* during the dispute.

41. The patron has the following recognised privileges besides that of presentation :

- (1) Precedence in processions in his church.
- (2) A prominent seat in the church.

(3) Special incensing, aspersion of holy water, candles, ashes, and palms, and the pax. Women who are patrons, however, are not censured nor given the pax.

(4) The right of honest support when necessary from the superfluities of the church, both for himself, his wife, and family. See 2 (3).

### PAULINE PRIVILEGE

1. The Pauline privilege is contained in the First Epistle to the Corinthians, seventh chapter, in these words :

‘ If one of the brethren hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And if any woman hath a husband that believeth not, and he be pleased to dwell with her, let her not put away her husband. But if the unbelieving depart let him depart, for a brother or sister is not under bondage in such cases.’

2. This Pauline privilege consists in dissolving a marriage that is :

(1) Contracted in mutual unbelief.

(2) But according to natural and divine positive law.

(3) And even consummated.

(4) When one of the parties becomes a Christian and the other remains in unbelief or is unwilling to dwell peacefully with the Christian party : that is, without injury to and loss of faith.

3. The Pauline privilege has no place where one of the parties is a heretic and the other a Catholic. It only obtains in favour of a conversion to the Christian faith.

4. It is necessary by questions to establish two facts—viz. whether the unbeliever will consent to be converted, and whether he or she will dwell in peace with the Catholic without contumely of the Creator : that is, with danger of perversion. If the answer be in the negative, then the bond of marriage can be dissolved when the believer desires to pass to a new marriage with a Christian. These questions are necessary except by dispensation of the Holy See.

S.C.C.  
17 Jan.  
1872

5. The Holy Office, 11 July, 1886, decided that if the non-Christian party agree to dwell peacefully with the Christian and then break this promise, the Christian can take advantage of the Pauline privilege.



## PENANCE

1. Penance as a sacrament belongs largely to the theologians, as regards its nature, its results, its necessity, its subject, minister, and conditions.

2. In regard to the questions of jurisdiction (*q.v.*), the approbation (*q.v.*), the examination (*q.v.*), the faculties (*q.v.*), the various kinds of confessors (*q.v.*), reserved cases (*q.v.*), Lateran decree (*q.v.*), these are all of direct interest to the canonist, and are treated of under each separate heading.

3. The First Provincial Council of Westminster thus decrees about this sacrament :

Rom. iii.  
23

‘As this sacrament is rightly designated the plank after shipwreck, and as we have all sinned, and need the glory of God, the efficacy of this saving medicine must be inculcated on all from their tender years, and all must be seriously trained to the use thereof. The faithful must also be exhorted to have recourse to this laver of the soul, not merely once a year, and at long intervals, but frequently ; even as often as they have contracted the stain of sin, so often let them seek to be cleansed ; as often as they feel the sickness let them hasten to the remedy.’

D. xix.

## PENSION

1. A pension is a charge upon a benefice.

2. When the holder of a benefice resigns through old age or infirmity he can, if necessary, have a pension from the benefice ; and this pension can be the condition of resignation (*q.v.*).

3. The pension must be moderate, and is given only when there is need. Most canonists hold that the pension may be a third part of the income. But fitting sustentation must still remain for the holder of the benefice.

4. The consent of the patron is not needed for imposing a pension ; for he has only the right of presenting to the benefice, not of enjoying it himself.

5. The pension must be given to a fit person for a proper cause.

6. Pensions *in materia odiosa* do not come under the name of benefices ; but *in materia favorabili* they have the advantage.

7. A pension lapses with the death of the pensioner. But the Pope can create a perpetual pension.

8. A pension also lapses by religious profession, heresy, pro-

motion to the episcopate, and, if above sixty scudi, by not wearing the clerical dress.

Sixtus V.  
Constit.  
*Pastoralis*

9. Bishops cannot impose a pension on parish churches.

10. In the Formula I, n. 8, of the Propaganda faculties the power is given to the bishop to assign a pension, not exceeding one third, to parish priests or missionaries, who after ten years' service resign their cures on account of sickness. The pension is payable by the successor out of all the income of the parish or the mission.

## PETITIONS FOR DISPENSATION

The following are forms in English for the more usual dispensations. It were well if these and all such documents be written in Latin.

### 1. *From Publication of Banns*

MY LORD,—*N. N.* and *N. N.* [*here insert names in full*], wishing to contract marriage, humbly beg for a dispensation from the triple publication of banns. The undersigned knows that no lawful impediment to such a marriage exists. The reasons for asking for this dispensation are.....

*Date and signature of the priest who forwards the petition.*

### 2. *For a Mixed Marriage*

MY LORD,—The undersigned applies for a dispensation in order that *A. B.* [*real name*], a Catholic of the congregation of..... may marry *C. D.* [*real name*], a baptized non-Catholic.

Both have promised that all the children, male and female, shall be baptized and brought up Catholics.

The non-Catholic party promises to allow *A. B.* the free exercise of the Catholic religion.

And the Catholic undertakes to use every endeavour to induce the other party to adopt the true faith.

The undersigned believes that the dispensation may be granted because.....

*Date and signature of the priest.*

### 3. *For an ordinary Matrimonial Dispensation*

MY LORD,—*Titus* [*say whether he be a Catholic or not*] wishes to marry *Bertha* [*say whether she be a Catholic or not*], notwithstanding an existing impediment of consanguinity [*or affinity*] in the.....

degree. Wherefore they humbly beg [*or the Catholic party begs*] that your Lordship will give the necessary dispensation to enable them validly and lawfully to contract marriage.

I, N. N., priest, do believe that such a dispensation may and ought to be given for the following reasons.....

*Date and signature of the priest.*

N.B.—*In the above petition the real names of the parties are to be inserted distinctly where the fictitious names are put, unless there be a relationship arising from a crime.*

### PETITIONS TO THE HOLY SEE

1. Petitions to the Holy See can be made either directly to the Pope or to the Congregation which is entrusted with the business in question. As a rule, all petitions to the Holy See are to be sent to the Congregations or to the Penitentiary according to their subjects.

2. Hence petitions on the following matters should go to their special destination :

(1) Ceremonial and liturgical questions go to the Sacred Congregation of Rites. *See ROMAN CONGREGATIONS.*

(2) Questions of law to the Sacred Congregation of the Council. *See ROMAN CONGREGATIONS.*

(3) Questions concerning the rights of bishops or of religious belong to the Sacred Congregation of Bishops and Regulars. *See ROMAN CONGREGATIONS.*

(4) Questions concerning the integrity of the faith to the Sacred Congregation of the Holy Office. *See ROMAN CONGREGATIONS.*

(5) Questions concerning heretical books belong to the Sacred Congregation of the Index.

(6) Questions directly concerning the internal *forum* go to the Sacred Penitentiary.

(7) All questions concerning the Church in missionary countries belong to the Sacred Congregation of the *Propaganda Fide*. Hence all questions between bishops and priests in missionary countries go to Propaganda ; and all licences, faculties, privileges, and honours come as a rule from this Congregation.

3. All petitions to the Holy See, whether sent directly to the Pope or to one of the Congregations, are to be drawn up in the same way.

4. As the Holy See wants to know who the petitioner is, what he wants, and why he makes the petition, the document naturally

falls under three heads. In a petition, therefore, the following points must be carefully observed :

(1) The full name, Christian and surname, with titles, if any, or qualifications ; country, diocese, and actual address of the writer.

(2) A statement of the facts of the case and of the principles involved. The Holy See deals with facts, and can apply to them the principles of canon law. Hence only facts should be introduced into the narrative, together with such proofs as will bear complete investigation. Attested copies of all necessary documents for proof should be appended to the petition. All personalities and recriminations in contentious petitions are more than useless, as they only tend to withdraw attention from the facts. A legal tribunal is not the place for anything else but a calm invocation of the law and an investigation of facts.

(3) After this exposition of the case, comes the actual petition proper, which can be expressed usually in a few words. To this must be added the reasons why the petitioner considers that his prayer should or may be granted.

(4) Conciseness, brevity, and clearness are especially needed for the expedition of business. Delays often occur because the precise point that the petitioner wishes to bring forward is not clearly expressed or is lost in a mass of unnecessary matter.

5. All petitions to the Holy See should be written in Latin. But by a letter of S.C.P.F. dated 29 September, 1861, Italian may be used for such purposes ; and, as a matter of fact, both French and English are understood at Propaganda. But documents are not received in the other Congregations in any other language than Latin or Italian. The Commission of the Sacred Penitentiary receives petitions in any language.

6. The text of the petition should be written in the third person, and the petitioner should be referred to as '*orator*.' The petition should begin in this way :

*Beatissime Pater.*

*Infrascriptus N. N. sacerdos saecularis et rector ecclesiae N. in N. diocesis N. in [Anglia] ad pedes S. V. provolutus, humiliter exponit.*

The ending is the abbreviated phrase, *Et Deus &c.*

Then comes the name in full of the petitioner, together with the date and the ordinary postal address of the writer.

7. Petitions should be written on white unlined quarto paper with a good margin on the left side of the paper. The text should begin halfway down the page, leaving a distance between *Beatissime*

*Pater* and the first clause. The pages should run continuously as in a book, *i.e.* page 2 to back page 1. The document should then be folded once only—lengthwise.

8. All petitions to Propaganda (*q.v.*) should be sent there direct. Petitions to the other Congregations must be sent to a recognised agent (there are many in Rome, and their names can be had from the national colleges), who will put them into the proper office, and in due time will go again to procure the reply. Most replies, especially those of ‘graces,’ have stamped upon them the moderate chancery fee for expediting the grant, and the authorised charge that the agent is allowed to make for his time and trouble. An agent is not necessary for any business with Propaganda; and this Congregation makes no charge for any work done.

#### PIOUS FOUNDATIONS. *See* ECCLESIASTICAL PROPERTY

#### PLAIN SONG

1. Plain Song, called also Gregorian chant, is, so declares Pius X. :

(1) ‘The chant proper to the Roman Church, the only chant she has inherited from the ancient fathers, which she has jealously guarded for centuries in her liturgical codices, which she directly proposes to the faithful as her own, which she prescribes exclusively for some parts of her liturgy, and which the most recent studies have so happily restored to its integrity and purity. On these grounds the Gregorian chant has always been regarded as the supreme model for sacred music.

(2) ‘The ancient traditional Gregorian chant must therefore be largely restored to the function of public worship, and everybody must take for certain that an ecclesiastical function loses nothing of its solemnity when it is accompanied by no other music than this.

(3) ‘Special efforts are to be made to restore the use of the Gregorian chant to the people, so that the faithful may again take a more active part in the ecclesiastical offices, as was the case in ancient times.

(4) ‘With the exception of the melodies proper to the celebrant at the altar and to the ministers, which must be always sung only to Gregorian chant and without the accompaniment of the organ, the rest of the liturgical chant belongs to the choir of Levites &c.

(5) ‘In seminaries of clerics and in ecclesiastical institutes let the above-mentioned traditional Gregorian chant be cultivated

*Motu proprio*, 22  
Nov. 1903

by all with diligence and love, according to the Tridentine prescription, and let superiors be liberal in encouraging and praising their young subjects.'

2. The S.C.R. 11 August 1905, issued certain instructions to be observed by publishers whenever they wish to prepare a new edition of the liturgical chant. They are as follows :

(1) Publishers and printers of whatsoever place or region who may wish to print the Gregorian melodies contained in the Vatican edition, whether in the same or a smaller or a larger size, whether wholly or in part, must first take care to obtain permission from the Apostolic See.

(2) By each of the publishers who shall have obtained Pontifical permission of this kind the following points are to be carefully attended to :

(a) That form of the notes and of the other signs in the Gregorian chant must be preserved which our ancestors established and which is found with exactitude in the Vatican edition.

(b) In particular there must be no change in the order in which the notes succeed each other according to the various intervals of sound ;

(c) Nor in the manner in which the notes are combined according to the different forms of the neums, as they are called.

(d) There is to be the most absolute correspondence of the words of the sacred text with the notes of the chant, so that each syllable shall lie right under its note or notes.

(3) When an edition has been prepared and completed it will be unlawful for anyone to publish it and use it in sacred functions unless the ordinary has given a declaration stating that it agrees with the typical Vatican edition.

(4) The ordinary is not to give a declaration of this kind unless censors skilled in the Gregorian chant shall first have made a careful comparison and attested, in writing, as a duty of conscience, that the new edition agrees completely with the Vatican one.

(5) To those parts of the liturgical Office which admit of different chants according to the different day or festival, as, for example, hymns and the ordinary of the mass, melodies can be adapted which may not be found in the typical edition and can be approved of by the Sacred Congregation of Rites, the proper conditions being observed, especially those which are laid down in § 4 of the *Motu proprio* of the 25th April, 1904. But varieties of tones or chants of this kind are not allowed in the other parts ; for instance,

in the antiphons and responses whether of the office or of the mass.

(6) If it is a question of the special offices of any Church or of a regular order following the Roman rite, or of offices lately granted, the Gregorian melodies belonging to them, restored or arranged by skilled men, are also to be submitted to the approbation of the Sacred Congregation of Rites. When this is obtained and the ordinary has been informed, as above, of the agreement with the originals recognised by the Sacred Congregation, let him grant the requisite declaration.

(7) It is allowable that the Gregorian chant should be published with modern musical notes, provided that the danger of the notes or neums being in any way disturbed be carefully removed. The ordinary can grant his approbation to these editions for the benefit of the faithful if he has ascertained that, in accordance with Art. 4 and 6, they faithfully conform to the typical edition or the approved melodies.

(8) Whenever a book containing the Sacred chant or any liturgical melody is submitted to the Sacred Congregation of Rites for approbation, three copies are to be sent to the Congregation.

(9) The Gregorian chant destined and approved of for liturgical use, according to the rules mentioned, belongs, like the text itself, to the treasury or patrimony of the Roman Church. Wherefore, when a new text is proposed or granted by it to the faithful, the chant corresponding to the text is to be held as granted at the same time in such a manner that no publisher or author can complain of the Apostolic See extending the same melodies to other churches. Nothing to the contrary interposing.

## POPE

1. The Pope is true Pope as soon as elected, and he has, at once, full and absolute jurisdiction. His election is the only one that needs no direct confirmation. There may be, of course, occasions when doubts as to the validity of an election may be lawfully raised and solved. Everything else which follows upon a papal election is merely ceremonial.

2. The foundation of the papal prerogatives are, amongst many others, to be found in the following classic texts of Holy Writ and the declaration of General Councils:

S. Matt.  
xvi. 18, 19

(1) 'Thou art Peter, and upon this rock I will build my Church; and the gates of hell shall not prevail against it. And to thee will

I give the keys of the kingdom of heaven : and whatsoever thou shalt bind upon earth shall be bound also in heaven : and whatsoever thou shalt loose upon earth shall be loosed also in heaven.'

(2) 'Simon, Simon, lo Satan hath desired to sift you like wheat : but I have prayed for thee, that thy faith fail not : and thou, being once confirmed, shouldst strengthen thy brethren.'

S. Luke  
xxii. 31,  
32

(3) 'Feed My lambs . . . Feed My lambs . . . Feed My sheep.'

S. John  
xxi. 15,  
16, 17

(4) The Council of Nicea (325) decreed—

'That the Roman Church is set above the other churches by no synodal decrees, but has obtained the primacy by the Gospel voice of our Lord and Saviour.'

(5) The Greeks at the II. Council of Lyons (1274) confessed :

'That the Roman Church possesses the highest and the full supremacy and principality over the whole Catholic Church . . . received from our Lord Himself in the person of St. Peter, the Prince and Chief of the Apostles, together with the fulness of power.'

(6) The General Council of Florence, also for the reunion of the Greeks (1438–1445), declared :

'That the Roman Pontiff, the true Vicar of Christ, is the head of the whole Church and the Father of all Christians, and that to him in Blessed Peter was committed by our Lord Jesus Christ the full power to feed the Universal Church, to rule and guide it.'

3. The General Council of the Vatican (1870) passed the following canons :

(1) 'If anyone say that it is not by the institution of Christ the Lord Himself or by *iure divino* that Blessed Peter hath perpetual successors in the primacy over the whole Church ; or that the Roman Pontiff is not the successor of Blessed Peter in the same primacy ; let him be anathema.

(2) 'If anyone should say that the Roman Pontiff hath only the office of inspection or direction, but not a full and supreme power of jurisdiction in the whole Church, not only in things which belong to faith and morals, but also in those which pertain to the discipline and ruling of the Church spread throughout the whole world ; or that he hath only the more important part, but not the whole fulness of this supreme power ; or that this power of his is not ordinary and immediate either over all and each of the churches or over all and each of the pastors and the faithful ; let him be anathema.'

4. Canonists distinguish in the Pope a threefold power :

(1) The power of the bishop of the Church Catholic.



(2) The power of the bishop of the Roman Church.

(3) The power of a temporal prince.

5. Putting aside the immediate power of the Pope, as local bishop of Rome, his supreme power of ruling the Universal Church is both legislative and executive. He has the power, as the supreme legislator, of making laws and of enforcing their observance. It is mainly the legislative power of the successor of St. Peter that concerns canonists. The prerogative of Infallibility is not required for the ruling power, but for that of teacher of faith and morals. Hence the definition of Papal Infallibility as decreed in the Vatican Council concerns more directly theologians, while the canons of the Papal Supremacy relate more immediately to the jurists.

6. The Pope is the supreme dispenser of all spiritual goods in the Church. He can absolve from any sin, relax vows and oaths, bind the faithful with censures and loosen them that be bound. He can dispense, as regards orders or matrimony, from any impediments of ecclesiastical institution.

7. He is the ordinary and supreme judge over all the faithful, so that all causes, belonging in any way to the ecclesiastical tribunal, can be brought before him. Therefore, as the supreme judge himself, he can be judged by no man. There is no valid appeal on earth from his sentence.

8. The Pope has the fullest administration and disposal of churches, monasteries, and benefices, together with their goods and rights; he can dispose of them for the public good of the Universal Church or even when the particular advantage of certain churches may so demand.

9. He has the supreme care of everything that belongs to the public worship. He therefore has power as regards the accidental ceremonies of the sacraments and of the Divine Sacrifice; so, if he see that the increase of divine worship, the edification of the faithful, and the salvation of souls require, he can introduce new rites, abrogate ancient ones. He can require from the clergy and aspirants to orders sometimes one kind of qualifications and sometimes another.

10. Hence in a word the Pope can do all that is necessary in his capacity of Bishop of the Church Catholic with ordinary and immediate jurisdiction. As the supreme lawgiver he is not absolutely bound by his own laws; but, relatively to the question of scandal and the necessity of preserving order, he is so bound, and never departs from them without grave and weighty reasons.

12. Hence, too, as the supreme ruler, he can delegate his powers

of government to the Roman Congregations (*q.v.*) and to others ; and to them, as well as to him personally, all obedience is due.

### PORTABLE ALTAR

1. The portable altar is a privilege granted to bishops and others and allows the possessor to say mass *inconsulto ordinario loci* ; and to hear a mass on the greater festivals, after celebrating.

2. Those who have this privilege are bound to attend strictly to the conditions of the grant.

3. These are, generally :

(1) That they shall not celebrate in a bedchamber.

(2) That they shall not celebrate out of their own houses, or in the houses of laics even in their own diocese, or with the consent of the ordinary if in another diocese.

4. The above restrictions do not apply during the time of visitation or on a journey, or when a long stay is made in any place.

Benedict  
XIV.  
Constit.  
*Magna*, 2  
June, 1751  
S.C.R.  
22 Aug.  
1818

Clement  
XI.  
Constit.  
*Quoniam  
sancta*,  
15 Dec.  
1703  
Innocent  
XIII.  
Constit.  
*Apostolici  
ministerii*

### POSTULATION

1. Postulation is a mode of facilitating an election. It consists in asking the superior, who has the right of confirmation (*q.v.*), to provide for the vacant dignity a person named who for some defect of age, order, or birth, cannot be elected.

2. There are two kinds of postulation :

(1) The solemn, which is the act of the body.

(2) The simple, which consists in asking a person interested in an election to give his consent to the election of some individual named, *e.g.* the consent of an abbat before one of his subjects is elevated to the prelacy.

3. The following are the rules of postulation :

(1) The postulation is to be made to him who has the right of confirmation and can dispense with the impediment to the election.

(2) Those who are not excluded from election by irregularity (*q.v.*) *ex vitio animi vel corporis* can be the subjects of postulation.

(3) If all the votes are given to one person, who is by law ineligible, it is clear that postulation must be made in his favour.

(4) Postulation is subject to the same strict rules as an election ; but there is a difference between the two. An election (*q.v.*) is irrevocable after the publication of the scrutiny ; postulation can be recalled until it has been admitted.

(5) The postulation must be drawn up in the terms of a petition, and it ought to contain an account of the defects which require dispensation.

4. Hence it is clear that only those bodies who enjoy the right of free election can exercise the privilege of postulation.

## PREACHING

*Cf. Sess.  
v. c. 2  
Cf. Sess.  
xxiii. c. 1,  
d. r.; and  
Sess.  
xxiv. c. 4*

1. The Council of Trent decrees that all bishops and archbishops are themselves bound to preach the Gospel unless they be lawfully prevented. If they be so prevented they are bound to use other fit men who can duly fulfil this office. And the same holy synod declares this to be *ex iure divino*, and says it is the principal function of bishops.

*Ibid.*

2. The Council also decrees: 'Let no one, whether secular or regular, even in the churches of their own orders, presume to preach *contradicente episcopo*.' Hence it is only the bishop who can give leave to preach.

*Ibid.*

3. Archpriests, parish priests, and all those who govern parochial churches, and others having in any way cure of souls, must be careful, unless lawfully prevented, to preach at least every Sunday and solemn festival, either themselves or by others, according to their capacity; also during Lent and Advent at least three times a week if it be necessary, and at other times that are expedient.

4. The subjects of this canonical preaching, from the decree of the Council, are:

(1) What is necessary for salvation that every Christian should know.

(2) What vices must be shunned to avoid eternal punishment.

(3) What virtues must be gained to ensure eternal bliss.

5. The manner of this preaching is also prescribed. It must be:

(1) In a few words; therefore sermons should be short.

(2) In easy words; therefore they should be clear and simple.

6. If neglect be shown in regard to this canonical duty of preaching, and after monition by the bishop the neglect continue for three months, the delinquent can be punished with censure or by any other means at the discretion of the bishop, *e.g.* by sequestering a part of the benefice for a fitting preacher.

7. Regulars cannot preach in their own churches without the approbation and permission of their own superiors, and without a previous examination as to their conduct, morals, and capacity.

They are then obliged to present themselves before the diocesan bishop for his blessing. In churches not belonging to their order they also require the bishop's leave.

8. Should any preacher sow among the people error or things scandalous the bishop shall inhibit him from preaching; and if he preach heresy the bishop, even as delegate of the Apostolic See, shall proceed against him in the accustomed manner.

9. The bishop should warn the people that each one is obliged, if it can be done conveniently, to assist at his parish church to listen to the Word of God.

10. The work of preaching can be committed to a cleric, even if not in sacred orders, but never to laics.

*Cf. v.  
Lateran  
Council*

11. The Council of Trent warns preachers not to enter into curious and subtle points in their sermons on Purgatory.

*Cf. Sess.  
xxv.*

12. The Fourth Westminster Council decrees :

*1 Cor. i. 17*

‘That is a wondrous saying of the Apostle’s, “Christ did not send me to baptize, but to preach the Gospel.” Accordingly, we have it in the Council of Trent that the chief duty of bishops is to announce God’s Word to men; and that which is chief in a bishop’s duty must assuredly be regarded as of the utmost moment in all. But as the simple and virile announcement of the Gospel is the health of the hearers, so vain and inflated declamation is a scandal to the faithful and ruin to the preacher. The mysteries of the Kingdom of Heaven must not be treated as subjects for rhetorical exercises or lucubrations of the literary art. The testimony of the Holy Ghost needeth not the persuasive words of human wisdom: yea, the simplicity of divine truth loathes and rejects the loftiness of our speech in order that our faith may not be in the wisdom of men but in the power of God. Let all leaders of souls, therefore, diligently strive in exhorting the faithful to piety to introduce nothing but what is full of simplicity and gravity in their treatment of the mysteries of faith.’

*1 Cor. ii. 5*

*xii. 5*

## PREBEND

1. A ‘prebend’ is the right belonging to a member of a chapter of receiving a share of the income of a cathedral church. From the right the name of ‘prebend’ has come to signify also the share itself received on account of the right.

2. A prebend is ordinarily confused with a canonry. But there is this difference. The canonry is a spiritual title and is independent of the temporal revenues. Hence there can be

canons (as in England) who have no prebends. The right to vote in chapter belongs to the canonry. The prebend is the means of support which the canon requires in order to do his duty.

3. As prebends are in their nature distinct from the canonry, so it has happened that a part of the revenues of a cathedral is set aside as semi-prebends to form the benefices of other permanent members of the cathedral clergy who are not strictly members of the chapter, e.g. *beneficiati*.

4. Prebends, therefore, are benefices (*q.v.*), and are ruled by their laws.

*Cf. Trent,  
Sess.  
xxiv.  
c. 15, d. r.*

5. The bishop should provide prebends for the chapter; and with the consent of the chapter he can reduce, in the months not reserved to the Holy See, the smaller prebends to a fewer number, or he can add to them, with the consent of patrons, simple benefices.

6. The prebends should be fixed to the stall, and they may be greater or less according to the circumstances of their foundation. Hence in many cathedrals there is the use of option for vacant prebends according to seniority in the service of the church, not according to years in the priesthood.

*Capitular  
Statutes,  
4, 5*

7. The First Provincial Council of Westminster decreed :  
'We especially recommend the canons to direct their attention and means to the formation by degrees of prebends attached to the cathedral church, so that, by God's help, canons may dwell at the church itself and perform the divine office therein, and more easily assist the bishop in governing the diocese. The canons should for this end often call upon the help and intercession of the saint to whom the cathedral church is dedicated.'

## PREBENDARIES

1. Prebendaries are those who enjoy a prebend (*q.v.*).

2. Hence, strictly speaking, prebendaries are canons.

3. But by custom in some places, where there are semi-prebends, those who hold them are called prebendaries simply to distinguish them from those holding canonical prebends, who are called canons.

## PRECEDENCE

1. Precedence is always to be given to the more worthy, according to circumstances.

2. Among bishops precedence is ordered according to the date of election.

3. In provincial councils the bishops assembled take rank according to the date of their consecration, not according to the dignity of their churches.

4. Cathedral chapters have always precedence over other chapters.

5. Precedence among parish priests is arranged according to the prerogatives of their church.

6. Precedence among priests is arranged by the date of ordination. University degrees give no precedence among the clergy.

7. The secular clergy always and everywhere enjoy precedence over the regulars, even in the churches of regulars.

8. Monks have always precedence over other religious. Among the mendicant orders the Order of Preachers has the highest rank.

9. Among regulars of either sex precedence dates from the day of profession, not of the habit, unless there be an approved custom in favour of the habit. S.O.E.R.  
12 Sept.  
1588

10. In orders, clerics and those professed for the choir take precedence over lay brethren.

### PRECENTOR

1. The precentor in a chapter is the one who presides in choir over those who take part in the psalmody.

2. His office is to teach the clerics who belong to the choir the manner and order of psalmody according to the variety and solemnity of the day. He appoints the lists of those who act as cantors, those who read the lessons, and those who in any way take part in the divine worship. Hence the precentor is the one deputed by the chapter to preside over the public worship of the cathedral. He has an especial office of superintending the musical part of the service.

3. His power and authority, as well as his actual position, vary in different places. The precentor is usually a dignitary and holds the second place in choir.

4. He has under him the succentor, who draws up the lists and actively superintends the music and the musicians.

### PRECEPT

1. The precept is one of the methods employed in an extra-judicial process. It comes after the canonical monition (*q.v.*) has proved ineffective.

K K

2. The precept, then, is a formal injunction, usually written and sent by the episcopal *curia*, with an explicit statement of what the delinquent must or must not do. To this must be added the threat of the specified ecclesiastical penalty which will be incurred if the precept be disregarded.

3. The act of precept must be signed by the parties present, and by the delinquent if he wish.

4. If he disregard the precept the extra-judicial method is at an end, and the next step is to begin the judicial process.

### PRECEPTS OF THE CHURCH

1. The First Council of Westminster made the following decrees on the precepts of the Church :

(1) 'It were much to be desired that the exact observance of holydays should prevail amongst us; but since it is difficult, especially to those who are dependent on Protestant masters, to abstain from servile work, we must labour most earnestly that the faithful at least hear mass on holydays that fall on week days. And therefore missionaries ought, if possible, to have at least one mass celebrated early to satisfy the devotion of their people. But they should admonish their flock that they may engage in business and work on those days not by their own authority, but by leave of the priest.

S.C.P.F.  
14 May,  
1853

(2) 'To increase the devotion of the people to the holy patrons of their dioceses and of their churches, we shall petition the Sovereign Pontiff graciously to permit those festivals to be transferred to the following Sunday unless the rubrics forbid.'

*This was granted, so far as concerns the mass of the patron saint of the place or of the church.*

(3) 'Priests should carefully explain the rules of fasting, particularly at the beginning of Lent: they should forbid promiscuity of foods, and should display a holy severity, tempered with charity, in exercising the dispensing power confided to them.

(4) 'As the obligation of paying tithes is no longer in force amongst us, the faithful should be reminded that they are not on this account exempt from the duty of providing for divine worship and for the proper support of sacred ministers.

xxiii. 1-5

(5) 'The faithful who through devotion or for any other reason do not frequent the quasi-parochial or missionary church to which is assigned their domicile (*q.v.*), must not think themselves dispensed from the obligation of aiding it and of supporting its pastors. More-

over, with regard to relieving the wants of the poor and providing for the education of children, they ought to be as solicitous as those who go to their own churches. Therefore let them, by alms according to their means, help in the fulfilment of these duties their faithful pastors, who bear the burthen of the day and the heat in cultivating the vineyard of the Lord.'

### PREFECT APOSTOLIC

1. Prefects apostolic are missionaries who act as superiors in countries that are not provided with bishops or vicars apostolic (*q.v.*). Therefore they differ from the last, as these have the episcopal character, while prefects apostolic have only a jurisdiction more or less restricted.

2. A prefecture apostolic is the first step towards the canonical organisation of a country.

3. Seculars or regulars can be made prefects apostolic.

4. The appointment is in the hands of the S.C.P.F.

5. The powers usually given to a prefect apostolic are those :

(1) Of giving the tonsure and the minor orders.

(2) Of giving the sacrament of Confirmation as extraordinary minister.

(3) Of ruling, placing, and removing their subjects.

(4) Of extending, restraining, and withdrawing their faculties.

(5) Of visitation.

(6) Of addressing pastorals to their people.

6. There are twelve prefectures apostolic in the British Empire and one (Alaska) in the United States.

### PRELATES

1. Prelates, properly so called, are those who have jurisdiction in the external *forum*. In a wide meaning prelacy is a term applied to the honour given to one on account of the jurisdiction with which he is invested :

2. There are various kinds of prelates :

(1) The great prelates, such as cardinals, archbishops, bishops, and others with a quasi-episcopal jurisdiction.

(2) Exempt prelates, like abbats and religious superiors, who are withdrawn from the diocesan ordinary jurisdiction.

(3) Roman prelates. These are of two kinds : active and honorary.



3. Prelates taken in this latter sense are of various kinds, and the latest legislation affecting them is found in a *Motu proprio* of Pius X. dated 21 February, 1905.

4. In the list of prelates are protonotaries apostolic in four classes, domestic prelates, private chamberlains *participanti* and supernumerary who are of two kinds: honorary and honorary *extra urbem*.

5. Only protonotaries and domestic prelates are for life; the others expire with the Pope who nominated them.

6. The S.C.C. sent out letters to all the bishops by order of Leo XIII. warning them to apply for these honorific grades for their clergy very rarely and with caution, and only for those who are tried and have merited well of the Church; and never for clerics who are subjects of another bishop against the knowledge and will of their ordinary.

16 Sept.  
1884  
*Collec-  
tanea*, 114

## PRESBYTERY

1. The Councils of Westminster prescribe the following as to presbyteries.

I. Concil.  
xxiv. 3

(1) 'The beauty of cleanliness with simplicity should shine forth in the houses of priests; and nothing in their furniture or ornaments should savour of luxury or worldliness. No ludicrous and foolish pictures, or such as are unbecoming to a priest should be seen there, but in each room there should be an image of our Lord crucified, or of the most holy Mother of God, or of the saints, or pictures illustrating the life of our Saviour or sacred history.

*Ibid.* 4

(2) 'In compliance with the injunctions of the canons, the female domestics of priests should be advanced in years and known for their modesty, prudence, and blameless lives.

*Ibid.*  
xxv. 4

(3) 'All sacred edifices . . . presbytery . . . he (*the incumbent*) must be careful to keep in good repair. There should be no change, either by way of addition or alienation, or any material alteration of church property undertaken by him without consulting the bishop.

IV. xi. 1

(4) 'Presbyteries should be everywhere the true abodes of peace and charity, of sobriety and modesty; in all things a worthy pattern to the faithful, that he who is opposed may fear, having no evil to speak against us

*Ibid.* 3

(5) 'Women should not live in a priest's house without leave of the ordinary. Schoolmistresses also and their pupil teachers should be strictly forbidden ever to live in a presbytery with the priest.

unless for some reason known to the bishop and approved by him in writing; for these, by intelligence and education being more refined, are more exposed to the tongues of calumniators.

(6) 'No priest should reside in a rented house or in a private house without the previous permission of the bishop. *Ibid.* 4; also Synod of Thurles, *De Vita* &c. n. 16

(7) 'It is true that by law or custom rectors and their assistants usually dwell in the same presbytery; but the presbytery is the rector's house while he discharges the duty of rector and has faculties in the diocese, and to him alone belongs the right of managing and ruling it; and not the right only, but the obligation as well. "If anyone knoweth not how to rule his own household, how shall he have care over the Church of God?" Let him understand, however, of whose spirit he be and how mutual charity and true respect among all the priests should be constantly maintained; he himself, therefore, should be as an elder among his assistants, not domineering over them, but rather acting as their father or elder brother. *Ibid.* 6

1 Tim.  
iii. 5

(8) 'The common table in presbyteries is the mark and sign of fraternal charity, and absence from it lessens, yea, if frequent, completely banishes it. Rarely, therefore, should they take meals elsewhere, much less habitually. Having food and raiment, let us with these be content. n. 7

(9) 'They should be back early at night time at the presbytery unless the call of duty or charity demand otherwise.' n. 10

## PREScription

1. Prescription is an exemption from the law acquired by a certain lapse of time and under certain conditions. It is also a means of acquiring the goods of another. Canonists require five conditions for lawful prescription:

2. Matter prescribable:

- (1) No prescription is admitted against the natural law.
- (2) Nor in things which of themselves are imprescribable.
- (3) Nor in abuses.

(4) Nor in matters concerning the obedience due to a lawful superior.

(5) Nor in matters purely spiritual.

3. Possession: which must be continual, peaceful, public not equivocal, and held as a proprietor.

4. A just title (*q.v.*): a true title is not necessary for prescription; a vicious one serves neither for nor against prescription.

5. Good faith : which must be continuous. It is absolutely necessary, for canonical prescription, and is of two kinds, viz. that which is

(1) Necessary for acquiring possession.

(2) Necessary for freedom from the law.

6. Time : that is, thirty years for most things that are prescribable ; forty years as regards *immobilia* of a church ; but one hundred years for prescribing against the Roman Church.

### PRESENTATION

1. Presentation is the right of patronage (*q.v.*). Usually a patron (*q.v.*) presents to the ordinary a fit person to be instituted to a benefice which is in the patron's gift.

2. The right of presentation is a canonical one, and is legislated for in all its aspects.

3. Lay persons as well as ecclesiastics can present if they have the patronage.

4. The effect of presentation is that the bishop is bound to institute the person presented unless there be canonical objection.

5. The refusal to institute is a *gravamen*, and both the person refused and the patron, singly or together, can appeal to the metropolitan or to the Holy See.

### PRESUMPTION

1. Presumption is a kind of proof arising from a reasonable confidence about a doubtful matter and is based on arguments and indications which are of value on account of circumstances.

2. There are two presumptions, viz. :

(1) *Presumptio iuris*, which proceeds from the authority and precept of the law. This is of two kinds :

a. *Iuris tantum*, which exists until the contrary be proved.

b. *Iuris et de iure*, when the *iuris* is so strongly supported that it is to be held for the truth.

(2) *Presumptio hominis*, which arises from no law. This kind of presumption is of three kinds :

a. Vehement : that is, founded on urgent conjectures.

b. Probable : that is, based only on probability.

c. Temerarious : that is, not reasonable or at any rate insufficient.

3. Temerarious or light presumption proves nothing, and is to be rejected entirely.

4. Probable presumption only affords a semi-proof; but if to it be joined public rumour it may reach to full proof.

5. Vehement presumption makes full proof, and suffices for condemnation in such civil causes as are not of too serious a nature.

**PRIEST.** See CLERIC

### PRIMATE

1. Primates are hierarchs having attached to their see ordinary jurisdiction over several metropolitans, who are, as it were, their suffragans.

2. They therefore by law can receive appeals from the sentences of metropolitans; and the primatial court forms a court of the third instance before a cause is brought to the Holy See.

3. To primates special and extraordinary business may also be committed by the Pope.

4. At the present time the actual jurisdiction of primates has fallen into abeyance; but there remains to them a pre-eminence of honour which was recognised at the Vatican Council, and it is possible that the primatial jurisdiction itself may be restored.

### PRIVILEGE

1. Privilege in its strict sense is a constitution of the supreme legislator granting a special favour; it is a private law obtaining against or beyond the *ius commune*.

2. It is not of the substance of a privilege that it be granted in writing.

3. Only he can grant a privilege who can make a law.

4. A just cause is needed for the lawfulness of a privilege, but not for its validity.

5. Privileges can be acquired by prescription (*q.v.*) as custom (*q.v.*) lawfully prescribed; for this has the force of law (*q.v.*) and gives jurisdiction (*q.v.*).

6. There are many points concerning privilege which require separate notice, *e.g.* the kinds, the confirmation, the interpretation, and the communication and loss thereof. Hence so many sections.

§ 1. *The Kinds of Privilege*

7. Privileges are :

(1) *Contra ius commune* : that is, derogating from an existing law.

(2) *Praeter ius commune* : that is, granting something beyond the scope of the law.

8. Privileges are also :

(1) Those that are contained in the *Corpus Iuris*.

(2) Those that are outside the *Corpus Iuris* and are granted by special rescript (*q.v.*).

9. Privileges are :

(1) Real, which affect some thing.

(2) Personal, which affect some person.

(3) Mixed, which affect both persons and things.

10. Privileges are :

(1) Remunerations : that is, given on account of merit.

(2) Merely favours : that is, given only out of benevolence.

11. Privileges are also :

(1) *Ex motu proprio* : these are favourable and of the fullest interpretation.

(2) *Ad preces* : that is, given in answer to petition.

12. The other kinds of privilege explain themselves, *e.g.*

(1) Written or unwritten privileges.

(2) Perpetual or temporary.

(3) Common or private.

(4) For the external *forum* or for the internal *forum*.

(5) *A iure* or *ab homine*.

§ 2. *The Confirmation and Interpretation of Privileges*

13. The confirmation or renewal of privileges is the strengthening by a lawful superior of a privilege already lawfully possessed.

14. Confirmation is granted in two ways :

(1) *In forma communi* : this is the scientific and ordinary way. It leaves things as they are *hic et nunc*, and introduces no new *ius*.

(2) *In forma speciali* or *ex certa scientia*. This gives a new *ius* and is a grant *de novo* making valid other privileges which were otherwise null.

15. It can be gathered from the text whether the confirmation be common or special. It will be the latter, as a rule, if in the

document are found such phrases as : *Ex certa scientia ; Ex plenitudine potestatis ; Non obstante quacumque lege ; Consuetudine in contrarium ; Supplentes omnes iuris et facti defectus*. Or by the insertion in the bull of all the privileges.

16. Confirmation is :

(1) Useful : that is, valid and of such a kind as no lower judge can controvert.

(2) Useless : that is, of no value, being vitiated by subreption (*q.v.*) or obreption (*q.v.*).

17. When privileges are frequently confirmed and in one bull some things are omitted which are to be found in another, they are not held to be revoked, for the Pope does not intend to revoke privileges unless he says so in express terms.

18. In the conformation certain clauses must be noted :

(1) *Quatenus* or *dummodo sint in usu*. The Pope does not confirm privileges that have lapsed by want of use.

(2) *Dummodo sacris canonibus et decretis Concilii Tridentini non adversentur*. This means most probably that any privileges that were revoked by the Council of Trent are not confirmed.

(3) *Quatenus* or *vel dummodo non sint revocata*. The Church does not hastily change her legislation, and, if privileges once granted have been revoked, she does not intend to confirm them unless the matter be made perfectly clear.

19. Privileges are interpreted in two ways :

(1) *Comprehensive* or by *extensio comprehensiva* : that is, an interpretation which is made beyond the words of the law ; but not beyond the mind of the legislator, *i.e.* when the law is extended to other causes or persons.

(2) *Extensive* or by *interpretatio extensiva* : that is, when the decision of one law is transformed or extended to another case which is both beyond the words of the law and the mind of the legislator, but not *against* his mind.

20. The interpretations of privileges are made :

(1) By authority. This is definitive and judicial and thus binds in and outside of the tribunals.

(2) By learned men. This is of value according to the weight to be attached to the reasons given for their opinions.

21. When words are clear no interpretation except the plain one is admitted.

22. A privilege is not to be extended from the person to whom it is granted to another not expressed in the grant, nor from one cause to another. A privilege, contrary to the common law, and

therefore prejudicial to it, is to be interpreted strictly; but one which is only beyond the common law, being favourable, can be amplified.

23. Privileges to the prejudice of a third party are to be interpreted strictly.

24. Privileges of honour do not induce exemption from the jurisdiction of the ordinary.

### § 3. *Communication of Privileges*

25. Privileges can be acquired, not only by concession or grant, but by communication.

26. Communication makes common to all of a class what has been granted to one. It consists of a sharing or concession of privileges which the Pope, after granting only in favour of one, extends to others.

27. It is evident that the communication of privileges can only take place by the authority of the Holy See.

28. Religious mendicants have the fullest communication of privileges, and also share in the privileges granted to the non-mendicant orders.

### § 4. *Loss of Privileges*

29. Personal privileges cease by the death of the holder. The general rule is that a favour, granted absolutely and accepted, does not cease by the death or deposition from office of the grantor.

30. If a privilege be granted with the clause *Usque ad beneplacitum nostrum*, it dies with the grantor; but if it be issued with the clause, *Usque ad beneplacitum Apostolicæ Sedis* or *Donec revocatus*, it only dies on revocation.

31. A real privilege dies with the thing when there is no hope of a restoration.

32. A privilege expires by abuse: but not always *ipso iure*, but usually by sentence only unless it be otherwise expressed in the law.

33. A privilege can be recalled by sentence if it chance to be to the grave prejudice of others.

34. When the final cause of a privilege ceases to exist, then the privilege itself expires. But this is not the case with the impulsive cause. Also it must be understood of those privileges which derogate from the *ius commune* or are to the prejudice of a third

party. Privileges that are mere graces do not expire when their final cause ceases.

35. A privilege will lapse by time when it was granted only for a fixed period.

36. Privileges expire also by renunciation. This must be free and expressed if it be a personal privilege. If it belong to a body, the renunciation of the body, not necessarily of every individual, is required.

37. If a privilege become hurtful it expires *per se* ; but the fact must be proved.

38. An affirmative privilege, granted with prejudice to others, is lost by way of prescription through non-use, if with occasion to use the privilege the holder do not, knowingly, spontaneously, and voluntarily avail himself thereof.

39. But affirmative privileges which are mere favours and harm no one are never lost by non-use.

40. Negative privileges which are mere favours, *e.g.* of not fasting, are not lost by the contrary use; but those which are granted *cum onere aliorum*, *e.g.* of not paying the *cathedra*ticum (*q.v.*), can be lost by the contrary use if it be spontaneous, voluntary, and free.

41. Privileges cease by revocation on the part of the grantor, his successor or his superior.

42. Revocation is :

(1) Expressed ; and this is—

*a.* Special.

*b.* General, which is also ordinary or extraordinary.

(2) Tacit.

43. The general common clause *Non obstantibus quibuscunque privilegiis* without any other express and specific mention, does not revoke privileges found in the *Corpus Iuris* or those granted to determinate persons. It also does not revoke privileges that are outside of the *Corpus Iuris* if these be granted with another clause to the effect that they are not revoked unless express mention be made of them in any decree of revocation.

44. No general clause revokes privileges made after the manner of a contract or as a reward of merit. There must be an expressed clause to that effect.

45. Tacit revocation is an act of the superior directly contrary to the privilege. The laws concerning tacit revocation are as follows :

(1) In a general law which does not expressly revoke privileges, those which are in the *Corpus Iuris* are considered to be revoked ;



but not those outside of it unless special mention be made of their revocation.

(2) A privilege once granted is not taken away nor tacitly revoked by a later privilege contrary to the former unless there be special mention of this. For such a privilege is *ius particulare*, and it is supposed that the superior was ignorant of it, as he makes no mention of it. Therefore the second concession is to be held subreptitious or obreptitious, and hence invalid.

(3) By a sentence passed against a privilege by the superior who could grant it, the privilege is not so much tacitly revoked as reprobated as defective, or rejected as invalid.

46. A merely gracious privilege granted to a subject can be *ex iusta causa* revoked validly and lawfully by the grantor, his successor or superior; and if *sine iusta causa* it is valid though unlawful.

47. Remunerative privileges, or those partaking of the nature of a contract, cannot be revoked except for grave reasons of the common good and with some compensation made for any injury incurred.

48. Is one bound to use a privilege? It depends whether it be a common or a private privilege. A common privilege may be lost by non-use; but an individual person cannot renounce what belongs to the whole body. On the other hand no one is bound *per se* to use a private privilege, for a privilege being a favour ceases to be one when it is against the will of the user. *Per accidens*, however, the holder of a private privilege may be obliged to use it, when by so doing an obstacle is removed which brings men under the common law.

## PROBATION

*See under* NOVICE and NEOPHYTE

## PROCEDURE

1. Procedure is the method of conducting causes. It has been carefully devised, after long experience, as a safe way of securing the ends of justice and of eliminating all that may interfere with the investigation of the truth. Its principles are based on the eternal principles of right; and safety in practice is best consulted by a scrupulous adherence to the prescribed method.

2. A bishop can proceed against a criminous clerk in two ways :

(1) Extra-judicially : that is, without a formal process.

(2) Judicially, and this in two ways : (a) summarily ; and (b) with all the solemnities prescribed by the law.

3. The methods laid down by the S.C.P.F. for England and the United States of America are based upon the canon law.

4. In these times it is difficult anywhere for the full solemnities prescribed by law to be observed. Hence the Holy See has drawn up and sanctioned a decree of the S.C.E.R. relating to the summary method of procedure in disciplinary and criminal causes for the clergy. This admirable decree (11 June, 1880) contains the essentials of a judicial process ; and it has been already adopted in France and Italy. The Instruction S.C.P.F. *Cum magnopere*, which obtains in the larger dioceses of England, in Scotland, and the United States, is based upon this decree.

5. It will be necessary to consider the subject of procedure in two sections, referring one to extra-judicial procedure and the other to judicial summary procedure.

### § 1. *Extra-judicial Procedure*

6. When the bishop hears that some one has sinned in a certain place, or that a cleric neglects to obey a precept, he is bound to inquire whether the abuse or crime delated exist and as to its nature and gravity. Thus he can in conscience decide what remedies may or may not be used.

7. The inquiry (*inquisitio*) may be (1) general or (2) special.

8. The general inquiry is held when the name is not given. It regards more the existence of the crime or of the abuse than the guilty person.

9. The special inquiry is held when, together with the crime or the abuse, the name of the guilty party is delated.

10. The inquiry can be conducted either by the bishop in person or by some ecclesiastical person deputed for that purpose.

11. If witnesses are to be examined they should be dealt with separately and under secrecy.

12. The accusation, deposition of witnesses, and all concerning the inquiry must be reduced to writing and preserved carefully in the archives in case it be necessary to proceed further, or in case an appeal be made to a higher court.

13. After due inquiry the bishop must form his judgment

whether the proofs or probabilities are such as warrant him in proceeding further against the accused.

14. If they are such, and the nature and gravity of the matter allow, he should not at once proceed to a judicial process, but first of all he should use the methods convenient to an extra-judicial method of procedure. Among these are a course of spiritual exercises, monition (*q.v.*), and precept (*q.v.*).

15. Hence he should summon the accused to him secretly, tell him of the existence of the accusation, without, however, giving him the names of the delators, and then paternally warn him to return to the path of justice. Or the bishop can either write or send some trustworthy person to convey the paternal monition. But this must be without any threatenings of punishment.

16. If the accused accept the invitation and refute the accusation, or if he promise to desist from an evil course and to repair the ill done, and if he carry out his undertaking, nothing further is to be done.

17. If the accused will not approach the bishop nor listen to his paternal monitions, then the bishop shall make use of canonical monitions, which must be carried out in legal form.

18. Canonical monitions are three in number, and are to be made at intervals of two days and in such manner that they can be proved by some act to have been duly made.

19. If these monitions fail, then the ordinary through his court should intimate to the accused that he is accused of such or such a fault, and that he must do or avoid such or such things, together with the threat of ecclesiastical punishment which he will incur if he neglect this general precept.

20. This formal precept or act of injunction is to be signed by those present, and the accused also if he so will.

21. The vicar general, as ordinary judge in the diocesan court, can demand an oath of secrecy from the witnesses should the nature of the case so require.

22. If the accused refuse to observe the precept, then the extra-judicial procedure must be left and recourse had to the judicial process.

## § 2. *Judicial Procedure*

23. The bishop should institute a judicial process for disobedience to a precept, common guilt, or transgression of ecclesiastical laws, and he should carry it out *summarie et sine strepitu*.

24. The process begins with the accusation; and the burthen of proof rests upon the prosecutor. The *reus* is not bound to prove his innocency, but successfully to rebut the charges brought against him.

25. The bishop makes use of a fiscal procurator (*q.v.*) to conduct the case in his name.

26. The process has to be compiled by some skilled priest, who is called the auditor (*q.v.*). He is to be assisted by a notary (*q.v.*), who may be the diocesan chancellor.

27. The cause for the process comes from the delation (*q.v.*), which must be confirmed by authentic information or extra-judicial confession, or witnesses also extra-judicial.

28. Legal proof is required before the culpability of the *reus* be established, and such proof is that which brings moral conviction with every reasonable doubt removed.

29. Legal proof is derived principally from the depositions of witnesses (*q.v.*). Therefore the judge or the auditor must cite and examine them.

30. An oath of telling the truth, and if necessary of keeping secrecy until the legal publication of the evidence, may be required from the witnesses when no legal difficulties are in the way. See OATH, n. 8.

31. The witnesses are to be examined separately, and, if unable to come before the court, by a commission appointed for the purpose.

32. If witnesses to some fact or circumstance necessary for elucidating the case cannot or refuse to be examined, this must be noted in the acts and the deficiency supplied by the testimony of others who in any way may know the matter under inquiry.

33. When everything has been done to establish the accusation, then the *reus* is to be summoned in writing for examination. In the citation (*q.v.*) the accusation must be detailed so that the *reus* can prepare his reply in writing. But, if the nature of the case or prudence determine that the accusation be not detailed, it is sufficient to state that the *reus* is called for examination, so that he may defend himself against certain charges arrived at after inquiry.

34. If the *reus* refuse to attend the examination the citation is to be repeated and a suitable period fixed within which he should present himself before the court; and it should, also, be made known to him that he will be declared contumacious if he do not appear. Unless he be lawfully hindered he is to be so declared.

But as contumacy affords one of the strongest signs of guilt, it is not to be presumed, but has to be proved.

35. If the *reus* attend the examination, he is to be heard, and his pleading is to be examined and weighed with all care.

36. Then the proof of the guilt and the testimony upon which it depends must be gone into before the *reus* can be held to have been convicted sufficiently, and to have incurred the punishments provided by law.

37. For this reason the depositions of the witnesses and the conclusions thence derived must be read before the *reus*, who is allowed to make what reply he can and to use in writing the right of self-defence.

38. The names of the witnesses are not to be disclosed while the process is preparing, but only after it is made known; then exception can be made to any.

39. Fresh witnesses can be produced, and they are to be examined by the auditor.

40. The answers, exceptions, &c. of the *reus* are to be taken in writing by the notary, and the whole process is to be read to him so that he may sign it himself. It is also to be signed by the judge or auditor and the notary.

41. This process so far has been devised for obtaining sure information as to the truth of the charge made against the defendant. The auditor must then make the summary of the chief arguments and give it to the judge, who hands it over to the fiscal procurator.

42. At the demand of the fiscal procurator, the bishop appoints the day for hearing the case. The court is duly opened and the accused is allowed to make his defence. This he can do either by himself or by another priest, who acts as his advocate. The defence must be put in writing.

43. The accused is not obliged to be present, but can be represented by an advocate, duly appointed either by the accused or by the bishop.

44. The defence being concluded, the fiscal procurator sends the process, together with the summary thereof, to the bishop, who, when he has taken full cognisance of the case, appoints a day when he will proceed to pronounce sentence (*q.v.*).

45. At the time appointed the bishop or the vicar general, in the presence of the fiscal procurator and of the defendant or his advocate, publishes his sentence and dictates to the notary the *pars dispositiva*, making express mention, if the award include punishment, of the sacred canon which applies to the case.

46. The sentence is made known to the accused or to his advocate, who within ten days can lodge an appeal (*q.v.*), which, if admitted, must be conducted with a procedure like that of the original trial.

47. If no appeal be made at the expiration of the ten days, the execution of the sentence takes place.

48. In doubtful and difficult cases it is well for bishops to take advice of the S.C.P.F., so as to avoid contentions and the possible nullity of their acts.

## PROCURATION

1. Procuration is a contribution necessary for the honest support during the time of visitation of the person who visits the churches of a diocese. It includes all things necessary for life ; but not travelling expenses, except in the case of an apostolic delegate (*q.v.*) who can demand his fare from place to place.

2. All parishes during visitation are bound to provide procurations unless they be exempt by lawful custom.

3. The Council of Trent decreed :

‘ And during it [visitation] bishops shall be careful not to be troublesome or burthensome to anyone by any useless expenses ; and neither they nor any of theirs shall, by way of agency-fee for the visitation or on account of wills made for pious uses—except that which is rightfully due to them out of pious bequests or under any other name whatsoever—receive anything, be it money or present, of whatsoever kind or in whatsoever way offered, any custom, even though immemorial, to the contrary notwithstanding ; with the exception, however, of food, which shall be furnished frugally and in moderation to them and theirs only during the time of the visitation and no longer. It shall be, however, at the option of those who are visited to pay, if they prefer it, in money, according to a fixed assessment, what they have been accustomed heretofore to disburse or to furnish the food as aforesaid. . . . But in those places or provinces where it is the custom that neither food, money, nor anything else be received by the visitors but that all be done gratuitously, the same shall be retained there.’

Sess.  
xxiv.  
c. 3, d. r.

4. A bishop holding a visitation of a poor convent under his jurisdiction cannot accept as procuration either money or food.

S.C.E.R.  
25 June,  
1665

5. He cannot accept procuration for visiting a private oratory (*q.v.*), nor from churches and benefices that have an insufficient income, nor from hospitals or other pious works for the poor.

L L

S.C.E.R.  
14 Nov.  
1581

6. He cannot accept procurations when visiting his cathedral, nor the churches and pious places of his cathedral city.

7. Outside of visitation a bishop going about his diocese to consecrate altars, churches, &c. or to confirm cannot demand procurations.

8. Procuration is only due to the bishop when he personally holds the visitation.

9. A vicar-general, or a vicar capitular, or a substitute for either, has only the right to have the procuration due to the bishop.

10. A visitor who receives hospitality from laymen cannot demand procuration from the clergy.

11. The laity cannot be compelled by censures to pay procuration.

12. A bishop visiting a place twice in the year has right only to one procuration.

13. A bishop may in special cases remit procurations so long as he does not prejudice the rights of his successor ; but he cannot make any general remission.

Letter of  
S.C.P.F.  
30 Nov.  
1882

14. The English bishops have leave to receive with discretion offerings from the faithful on occasion of visitation provided they do not accept them where they would be too burthensome to the faithful or to the mission.

## PROCURATOR

1. A procurator is one who transacts business for or acts in the name of another.

2. There are two kinds of procurators :

(1) One appointed for judicial matters.

(2) One appointed for matters that are not the subject of litigation.

3. Procurators also are :

(1) General, when they are deputed for all kinds of causes. These may have full power or with certain limitations.

(2) Special, when they are deputed for a certain business. These also may have full power to terminate the business or have certain limitations.

4. There may be several procurators appointed for business, either general or particular. These can be :

(1) Constituted *simpliciter cum aliis*, so that one cannot act without the other.

(2) Constituted *in solidum*, so that one can act.

5. Anyone not prohibited by law can appoint a procurator to act for him although he himself be present.

6. The law does not allow excommunicated persons to appoint procurators for themselves as plaintiffs, but they can do so if they be defendants. Religious persons are also forbidden to appoint procurators except with the licence of their superiors and for the advantage of their order.

7. A procurator who acts beyond the limits of his procuration does not prejudice his principal, but the neglect of a general procurator or his guile is to the prejudice of the principal. A special procurator, who does not exceed the limits of his mandate, prejudices his employers by his acts.

8. Those who can be appointed procurators are all who are capable of conducting business, and are not excluded by law, *i.e.* in judicial matters those under excommunication or under twenty-five years of age.

9. Hence laymen may be appointed procurators in spiritual causes provided that they exercise a simple *ministerium*.

10. Procurators may be appointed in all causes not prohibited expressly by law whether in judicial or extra-judicial causes. Procurators may be appointed in ecclesiastical causes which concern dismissals, censures, or the like. But the judge can for fitting reasons command the personal attendance also of the accused.

11. The procurator for a plaintiff must have, for the validity of his acts, a mandate or deed of procuration. The document must state the names of the principal, of the procurator, of the person against whom, of the judge before whom, the proceedings are instituted; the nature of the cause entrusted to the procurator, together with the date of the execution of the deed. The principal should state that he will ratify whatever is done by his procurator.

12. For a defendant letters of procuration are necessary in two cases :

(1) When the procurator is one accustomed to act for parties, and brings with him the instruments of the case.

(2) When he acts for others in a cause in which he is a co-principal.

13. Procurators are necessary for corporate bodies, and should be elected by the body. When several are appointed, each is considered as appointed *in solidum* unless the contrary be expressly specified. The right to appoint a procurator for a convent of nuns belongs *de iure ordinario* to the bishop; and the appointment should be for three years and no more.



14. Procuration ceases in the following ways :

- (1) By revocation if the cause have not begun.
- (2) By renunciation at any period.
- (3) By the conclusion of the case if the procuration be special.
- (4) By the death of the principal if the cause have not begun.
- (5) By the death of the procurator himself.

### PROCURATOR CLERI

1. The *procurator cleri* is an official appointed as a representative of the clergy and acting at their mandate. It is his duty to make in their name respectful representations to the bishop of all that they consider too hard or too severe in the synodal decrees. It is also his duty to make such recommendations as seem good to them concerning these same decrees.

2. Hence the *procurator cleri* is bound to listen to the representations of the clergy and to transmit them faithfully to the secretary of the synod.

3. He must put the *gravamina cleri* into writing and present them in a document.

4. He is one of the officials that must be appointed at every synod.

5. The *ratio* of his appointment is that the views of those governed should be formally made known to the lawgiver. It would seem that he can act during the two months that are allowed for appeal before synodal decrees are enforced.

### PROFESSION

1. Profession is not a mere promise as in a simple vow, but it is on one hand a giving of one's self to the divine service by living chastely, in poverty, and under obedience according to an approved order ; and on the other an acceptation thereof by a duly constituted authority.

2. Profession is of two kinds according to the vows (*q.v.*) ; that is, it is either solemn or simple.

3. Profession is also—

(1) Expressed, when by word, writing, or sign consent is sufficiently expressed.

(2) Tacit, when neither by word, writing, nor sign, but by one or several acts proper to the professed it is considered to be understood.

4. Among the things required for the validity of a profession are :

- (1) Hability on the part of the novice.
- (2) Sixteen years of age completed.
- (3) The completion of the novitiate.
- (4) Freedom of consent and acceptance.

*Cf. Trent,  
Sess. xxv.  
c. 15*

5. After the end of the novitiate profession is made in simple vows for three years; and at the expiration of that time, if worthy, the religious is admitted to solemn vows. The superior for just and reasonable causes can defer the solemn vows, but not beyond the age of twenty-five years.

*S.C.E.R.  
3 May,  
1902*

6. The simple vows of profession are perpetual on the part of the vower, and dispensation is reserved to the Roman Pontiff. Hence the effect of profession of simple vows is to bind the religious to the order, but not the order to the religious. This only takes place by the solemn profession.

*Ibid.*

7. The power of dismissing religious professed of the simple vows belongs to the commissary apostolic of the order with his general council. A general can subdelegate the power to tried and prudent religious in far distant places. While no formal trial be required, superiors have to use all prudence, charity, and care.

8. No one who has made profession of simple vows can be dismissed on account of ill health supervening.

9. Tacit profession, so far as concerns solemn vows, is abolished. It must be expressed.

*Cf. S.C.C.  
19 March,  
1857;  
17 July,  
1858*

10. As regards nullity of profession the Council of Trent decreed, that if any regular pretend that he entered an order by force or fear, and say that he was professed before the due age or the like, and wish for any cause to give up the habit, or with the habit to leave the monastery without the leave of the superiors, he is not to be heard except it be within five years only of his profession, and then not unless he has brought his alleged reasons before his superior and the ordinary. If he have already given up the habit his cause is not to be admitted, and he must be made to return to his monastery and punished as an apostate.

*Cf. Sess.  
xiv.  
c. 19,  
De Regul.*

11. Hence the ordinary, together with the superior, has to take cognisance of the plea of invalid profession. If the two judges do not agree the matter is to be referred to the Holy See.

*Benedict  
xiv.  
Constit.  
Si datum*

12. A *defensor professionis religiosae* must be appointed in every diocese, and his intervention is necessary for the process.

### PROFESSION OF FAITH

1. By ecclesiastical law all those about to be baptized must make a profession of faith either by themselves or by their god-parents (*q.v.*).

2. Heretics, upon reconciliation to the Church, have to abjure heresy by making a profession of faith.

3. Doctors and teachers, advocates, procurators, judges, confessors, and preachers &c. are bound to make the profession of faith before entering upon the duties of their office.

4. Those who are promoted to holy orders or to the episcopate and all who are present at a provincial council have to make the profession.

5. All who hold benefices have, at their first attendance at the diocesan synod, to make a similar profession.

6. Canons and dignitaries are bound, within two months of the time of taking possession, personally to make the profession, not only before the bishop or his vicar general, but also before the chapter. If the bishop be present in chapter one profession of faith is sufficient.

7. Regular prelates who preside over monasteries must make the profession within two months.

8. The following are not bound: coadjutors of canons, temporal vicars, or cathedral chaplains.

9. The acts of faith &c. are to be recited in a loud voice by the parish priest at the parochial mass.

10. The First Provincial Council of Westminster decreed:

xxv. 1

‘Whosoever is set over a congregation should make a profession of faith before the bishop or his vicar; and this faith he will engage to preach in all its integrity to the faithful committed to his charge.’

**PROMULGATION.** See LAW, § 2

### PROOF

1. Proof is an establishment of a doubtful or disputed matter made by lawful arguments.

2. Proof is of two kinds:

(1) Extra-judicial, which is not brought before the court.

(2) Judicial, which is an act brought forward in court by the production of documents, by the testimony of witnesses, or by the arguments of counsel, which convinces the judge of the certainty of a disputed matter. It must follow the terms of the libel (*q.v.*). It may be such as brings full conviction, and this enables the judge to pronounce sentence without further investigation ; or it may only convince him that the matter is probable.

3. Full proof is derived from :

(1) The testimony of two witnesses on one and the same point, provided that they be above all suspicion and are unshaken in their evidence.

(2) A public instrument or other document having the force of a public instrument.

(3) Presumption (*q.v.*), whether *iuris* or *facti*.

(4) An oath taken by one of the litigants at the demand of the opposing party.

(5) The confession of the accused.

(6) The evidence or notoriety of the fact.

4. The principal effect of full proof is that the judge has to pronounce sentence *secundum allegata et probata*.

5. Incomplete proof is derived from :

(1) The testimony of one witness or of several witnesses each of whom testifies to a different point.

(2) The testimony of two witnesses who are not altogether above suspicion, and whose evidence has been somewhat shaken by cross-examination.

(3) A private instrument.

(4) Comparison of hand-writings in cases of doubtful authenticity.

(5) Probable presumption.

(6) Fame.

(7) The supplementary oath.

6. Two imperfect proofs can never in a criminal cause constitute a full proof, which must be *lucē meridiana clarior*. The same applies to matrimonial causes and to civil causes of a grave character. In other cases two imperfect proofs, if joined together and converging, afford a full proof.

7. Vehement suspicion is not sufficient to condemn anyone. Hence it follows that judicial proof must be full and conclusive, except in three cases :

(1) The testimony of one is sufficient when his witness is beneficial to another and hurts no one.

(2) It is also sufficient in summary causes concerning matters of little moment, but not sufficient in summary and extra-judicial proceedings concerning matters of great moment.

(3) Imperfect proofs are sufficient when a cause is committed to a judge to proceed *sola facti veritate inspecta*.

8. The *onus probandi* rests upon the plaintiff or accuser, except when the presumption *iuris* is in his favour or when the defendant makes an exception so that he, so far as the exception is concerned, becomes the plaintiff.

9. The nine kinds of proofs are contained in the following verses :

*Aspectus, sculptum, testis, notoria, scriptum,  
Iurans, confessus, praesumptio, fama probavit.*

10. In the clashing of contrary proofs the stronger prevails. Thus, a clear and more distinct proof prevails against one that is obscure and less distinct.

11. In cases of equal proof the balance inclines towards the accused or the possessor, except in four cases :

- (1) Matrimony.
- (2) Liberty.
- (3) Dowry.
- (4) Wills.

12. Proof from the testimony of witnesses cannot be accepted unless the adversary be cited and be present, if willing.

13. Judicial proofs on affidavits must be made in the presence of a public notary or of two fit persons as witnesses of the deposition.

14. The plaintiff, as a rule, cannot demand as proof that instruments (*q.v.*) belonging to the defendant should be given to him as a means of proving his charge, neither is the defendant bound to yield them except when the instruments are common.

15. After the filing of affidavits no more proofs or any other witnesses sustaining the same matter or directly contrary to it can be introduced, excepting in beneficial causes ; but new instruments can be produced until the conclusion of the cause.

16. After the conclusion of the cause no more witnesses are to be admitted or proofs examined, but sentence is to be passed *secundum allegata et probata*.

17. A negative cannot be proved directly. But the negation *iuris* and the negation *qualitatis* can be proved. As regards the negation *facti* there can be indirect proof of a definite fact ; but none of an indefinite one.

18. As regards the proof of confession—that is, an acknowledgment by a person, in or out of court, that what is charged or asserted by his opponent is true and just—a few remarks are necessary.

19. There are two kinds of confession.

(1) Extra-judicial, which takes place out of court.

(2) Judicial, which takes place before the judge.

20. Judicial confession is the queen of proofs and relieves the adversary of all necessity of giving further proof. But to be perfect it must have the following qualities :

(1) The person who makes it must be twenty-five years old.

(2) It must be made with entire liberty and not through fear.

(3) With certain knowledge, not only of the fact but of the consequence.

(4) And be made before the judge in his court : that is, publicly.

(5) It must also be made during the trial.

(6) It must be clear and definite in terms.

21. Extra-judicial confession, if properly proved by two witnesses who were present when it was made, or by writing, has the force of a judicial confession in civil causes if it were made in specific terms. In criminal causes it only affords a grave presumption of guilt, not full and sufficient proof.

## PROPAGANDA FACULTIES

1. Before mentioning the faculties granted by the S.C.P.F. to bishops under its jurisdiction some general remarks concerning these faculties must be made.

2. Propaganda faculties are ordinary or extraordinary, and they profoundly modify the common law in certain respects.

3. In making use of them, those rules have to be observed which the nature of delegated jurisdiction demands or permits, provided that it be not clear that the Apostolic See wishes otherwise. *See DELEGATION.*

4. The faculties cease after the lapse of the time for which they were granted ; but the S.C. 16 January, 1797, decreed that the faculties continue in force in favour of those who, without fault of their own, have been prevented from applying for a renewal. But this does not apply to a bishop who has omitted to ask in time for the renewal.

S.C.P.F.  
10 Aug.  
1841

5. Faculties granted for a certain number of cases, or for a certain time, cease as soon as that number has been completed, or when the time lapsed, even if the number be not completed.

6. When the grant is certainly personal the faculties cease by the death of the holder or when in any way he vacates his office.

7. They do not cease by the death of the Pope who granted them.

8. These faculties must be exercised *gratis*; and they cannot be sub-delegated without a special indult.

S.C.S.O.  
2 May,  
1877

9. If in the *formula* there be added the clause that the bishop cannot use the faculties *extra fines suae dioecesis* it is to be understood of the person in whose favour the faculties are used. The bishop himself may use the faculties when he is absent from his diocese.

10. The ordinary faculties are distinguished with Roman numerals, *e.g.* Form I.—Form V.; the extraordinary faculties with capital letters as Form C.—Form E. The grant of the ordinary faculties varies with different countries; that of the extraordinary faculties depend upon the need. In England and Scotland the bishops have Form II., in Ireland Form VI., in the United States of America and Canada Form I. obtains.

#### THE ORDINARY FACULTIES

##### *Formula I.*

(1) *Conferendi ordines extra tempus, et non servatis interstitiis usque ad praesbyteratum inclusive, si sacerdotum necessitas ibi fuerit.*

(2) *Dispensandi in quibuscumque irregularitatibus, exceptis illis, quae vel ex bigamia vera vel ex homicidio voluntario proveniunt; et in his etiam duobus casibus, si praecisa necessitas operariorum ibi fuerit, si tamen, quoad homicidium voluntarium ex huiusmodi dispensatione scandalum non oriatur.*

(3) *Dispensandi super defectu aetatis unius anni ob operariorum penuriam, ut promoveri possint ad sacerdotium, si alias idonei fuerint.*

(4) *Dispensandi et commutandi vota simplicia in alia pia opera, et dispensandi ex rationabili causa in votis simplicibus castitatis et religionis.*

(5) *Absolvendi et dispensandi in quacumque simonia; et in reali, dimissis beneficiis et super fructibus male perceptis, iniuncta aliqua eleemosyna vel poenitentia salutari arbitrio dispensantis vel*

*etiam retentis beneficiis, si fuerint parochialia et non sint qui parochiis praefici possint.*

(6) *Dispensandi in 3 et 4 consanguinitatis et affinitatis gradu simplici et mixto tantum, et in 2, 3, et 4 mixtis, non tamen in 2 solo quoad futura matrimonia; quo vero ad praeterita etiam in 2 solo, dummodo nullo modo attingat primum gradum, cum his qui ab haeresi vel infidelitate convertuntur ad fidem Catholicam et in praefatis casibus prolem susceptam declarandi legitimam.*

(7) *Dispensandi super impedimentum publicae honestatis iustis ex sponsalibus proveniente.*

(8) *Dispensandi super impedimentum criminis neutro tamen coniugum machinante et restituendi ius amissum petendi debitum.*

(9) *Dispensandi in impedimento cognationis spiritualis praeterquam inter levantem et levatum.*

(10) *Hae vero dispensationes matrimoniales videlicet 6, 7, 8, et 9 non concedantur nisi cum clausula: dummodo mulier rapta non fuerit vel si rapta fuerit, in potestate raptoris non existat: et in dispensatione tenor huiusmodi facultatum inseratur, cum expressione temporis ad quod fuerint concessae.*

(11) *Dispensandi cum gentilibus et infidelibus plures uxores habentibus, ut post conversionem et baptismum, quam ex illis maluerint, si etiam ipsa fidelis fiat, retinere possint, nisi prima voluerit converti.*

(12) *Conficiendi olea sacra cum sacerdotibus, quos potuerint habere, et, si necessitas urgeat, etiam extra diem Coenae Domini.*

(13) *Delegandi simplicibus sacerdotibus potestatem benedicendi puramenta et alia utensilia ad sacrificium missae necessaria, ubi non intervenit sacra unctio; et reconciliandi ecclesias pollutas aqua ab episcopo benedicta, et in casu necessitatis, etiam aqua non benedicta ab episcopo.*

(14) *Largiendi ter in anno indulgentiam plenariam contritis, confessis ac sacra communione reffectis.*

(15) *Absolvendi ab haeresi et apostasia a fide et a schismate quoscunque etiam ecclesiasticos tam saeculares quam regulares; non tamen eos qui ex locis fuerint ubi Sanctum Officium exercetur, nisi in locis missionum, in quibus impune grassantur haereses, deliquerint, nec illos qui iudicialiter abiuraverint, nisi isti nati sint ubi impune grassantur haereses, et post iudicalem abiurationem illuc reversi in haeresim fuerint relapsi, et hos in foro conscientiae tantum.*

(16) *Absolvendi ab omnibus censuris etiam speciali modo in Bulla 'Apostolicae Sedis moderationi,' die 12 Octobris 1869, Romano Pontifici reservatis, excepta absolutionis complicitas in peccato turpi.*



(17) *Concedendi indulgentiam plenariam primo conversis ab haeresi, atque etiam fidelibus quibuscumque in articulo mortis, saltem contritis, si confiteri non poterunt.*

(18) *Concedendi indulgentiam plenariam in oratione 40 horarum ter in anno indicenda diebus episcopo bene visis, contritis et confessis et sacra communione reffectis, si tamen ex concursu populi et expositione SSmi Sacramenti nulla probabilis suspicio sit sacrilegii ab haereticis et infidelibus aut offensionis a magistratibus.*

(19) *Lucrandi sibi easdem indulgentias.*

(20) *Singulis secundis feriis non impeditis officio IX. lectionum, vel, eis impeditis die immediate sequenti celebrando missam de requie, in quocumque altari, etiam portabili, liberandi animas secundum eorum intentionem a purgatorii poenis per modum suffragii.*

(21) *Tenendi et legendi, non tamen aliis concedendi, praeterquam ad tempus tamen, iis sacerdotibus quos praecipue idoneos atque honestos esse sciat, libros prohibitos, exceptis operibus Dupuy, Volney, M. Reghellini, Pigault-Lebrun, de Potter, Bentham, J. A. Dulaure, Fêtes et Courtisanes de la Grèce, Nouvelle di Casti et aliis operibus de obscenis et contra religionem ex professo tractantibus.*

(22) *Praeficiendi parochiis regulares, eisque suos deputandi vicarios in defectu saecularium, de consensu tamen suorum superiorum.*

(23) *Celebrandi bis in die, si necessitas urgeat, ita tamen ut in prima missa non sumpserit ablutionem,—per unam horam ante auroram et aliam post meridiem—sine ministro—et sub dio et sub terra, in loco tamen decenti—etiamsi altare sit fractum vel sine reliquiis sanctorum—et praesentibus haereticis, schismaticis, infidelibus, et excommunicatis—si aliter celebrari non possit. Caveat vero, ne praedicta facultate seu dispensatione celebrandi bis in die aliter quam ex gravissimis causis et rarissime utatur, in quo graviter ipsius conscientia oneratur. Quod si hanc eandem facultatem alteri sacerdoti iuxta potestatem inferius apponendam communicare, aut causas ea utendi alicui qui a Sancta Sede hanc facultatem obtinuerit approbare visum fuerit, serio ipsius conscientiae iniungitur, ut paucis dumtaxat, iisque maturioris prudentiae ac zeli et qui absolute necessarii sunt, nec pro quolibet loco sed ubi gravis necessitas tulerit et ad breve tempus eandem communicet aut respective causas approbet.*

(24) *Deferendi SSimum Sacramentum occulte ad infirmos sine lumine illudque sine eodem retinendi pro eisdem infirmis in loco tamen decente, si ab haereticis aut infidelibus sit periculum sacrilegii.*

(25) *Induendi se vestibus saecularibus si aliter vel transire ad loca eorum curae commissa vel in eis permanere non poterunt.*

(26) *Recitandi rosarium vel alias preces, si breviarium secum*

*deferre non poterunt, vel divinum officium ob aliquod legitimum impedimentum recitare non valeant.*

(27) *Dispensandi quando expedire videbitur super esu carniū, ovorum et lacticiniorum tempore ieiuniorum et quadragesimae non tamen per generale indultum sed in casibus particularibus.*

(28) *Praedictas facultates communicandi, non tamen illas quae requirunt ordinem episcopalem vel non sine sacrorum oleorum usu exercentur, sacerdotibus idoneis qui in eorum dioecesibus laborabunt, et praesertim tempore sui obitus, ut sede vacante sit qui possit supplere donec Sedes Apostolica certior facta, quod quam primum fieri debet per delegatos vel per unum ex iis, alio modo provideat : quibus delegatis auctoritate apostolica facultas conceditur sede vacante et in casu necessitatis, consecrandi calices, patenas et altaria portatilia sacris oleis ab episcopo tamen benedictis.*

(29) *Et praedictae facultates gratis et sine ulla mercede exercentur et ad . . . tantum concessae intelligantur nec illis (in Form II. there is added ullo modo) uti possit extra fines suae dioecesis.*

#### Formula II.

This formula is the same as Formula I. with the following exceptions :

(2) *Dispensandi in quibuscumque irregularitatibus exceptis illis quae vel ex bigamia vera vel ex homicidio voluntario proveniunt.*

(4) *Dispensandi et commutandi vota simplicia etiam castitatis ex rationabili causa in alia pia opera, non tamen religionis.*

(5) *Dispensandi in quacumque simonia ; et in reali dimissis beneficiis et super fructibus male perceptis, iniuncta aliqua eleemosyna vel poenitentia salutaris arbitrio dispensantis.*

(12) *Conficiendi olea sacra cum sacerdotibus quos potuerit habere, dummodo ad minus sint quinque, non tamen extra diem Coenae Domini.*

#### Formula VI.

Taking Formula I. as the type, Formula VI. given to the Irish bishops consists of :

(1) Article 15 of Formula I.

(2) Article 21.

(3) *Dispensandi in 3 et 4 gradu simplici et mixto tantum in contrahendis, in contractis vero cum haereticis conversis etiam in 2 simplici et mixto, dummodo nullo modo attingat primum gradum, et in his casibus prolem susceptam declarandi legitimam.*

(4) As in Article 7.

(5) As in Article 8.

(6) As in Article 9.

(7) As in Article 10.

(8) *Dispensandi in irregularitatibus ex delicto occulto tantum provenientibus, excepta ea quae ex homicidio voluntario contrahitur.*

(9) *Dispensandi et commutandi vota simplicia in alia pia opera, exceptis votis castitatis et religionis.*

(10) As in Article 5.

(11) As in Article 16.

(12) *Dispensandi cum Catholicis super fructibus bonorum ecclesiasticorum male perceptis.*

(13) *Dispensandi cum eisdem Catholicis ut possint retinere bona ecclesiastica et fructus ex illis percipere, accepta ab illis promissione de stando iudicio Ecclesiae circa eorum restitutionem cum fieri poterit, illis interim admonitis ut de dictis fructibus faciant eleemosynam iudicio confessarii in usum religionis cuius ante haeresim et schisma erant bona, si ibi adsit illa religio, sin minus in pauperes Catholicos, et memores sint, bona illa esse revera Ecclesiae.*

(14) As in Article 27.

(15) *Celebrandi Missam in quocumque loco decente etiam sub dio, sub terra, una hora ante auroram et alia post meridiem, bis in die si necessitas cogat, si tamen in prima Missa non sumpserit ablutionem, et super altari portatili etiam fracto aut laeso et sine sanctorum reliquiis et praesentibus haereticis aliisque excommunicatis, si aliter celebrare non possit et non sit periculum sacrilegii, dummodo inserviens non sit haereticus vel excommunicatus. Caveat vero etc.*  
as in Formula I., Article 23.

(16) As in Article 17.

(17) As in Article 18.

(18) *Concedendi singulis dominicis et aliis diebus festis decem annorum indulgentiam iis qui eius concionibus intervenerint, et plenariam iis qui praevia sacramentali peccatorum suorum confessione Eucharistiam Sacram sument in festis Natalis Domini, Paschatis, et Assumptionis Beatissimae Virginis.*

(19) As in Article 19.

(20) As in Article 20.

(21) As in Article 24.

(22) As in Article 25.

(23) As in Article 26.

(24) *Communicandi praedictas facultates duobus sacerdotibus tantum in qualibet civitate et oppido insigni vel in conventu regu-*

*larium, theologis tamen aut in aliquo collegio bene instructi et praesertim tempore sui obitus ut sede vacante sit qui possit supplere donec Sedes Apostolica certior facta, quod quam primum fieri debebit, per delegatos aut per unam ex iis alii modo provideat.*

(25) As in Article 13.

(26) *Conferendi ordines extra tempus et non servatis interstitiis usque ad presbyteratum inclusive.*

(27) As in Article 3.

(28) *Conficiendi olea cum quinque saltem sacerdotibus non tamen extra diem Coenae Domini nisi necessitas aliud urgeat.*

(29) As in Article 29.

N.B.—On Article 24 of Formula VI., the S.C.P.F. declared that the term *insigni* was to be taken *ratione loci, sacerdotis et fidelium*, and Leo XIII. 25 January, 1895, granted all the bishops of Ireland the faculty to subdelegate the power of absolving from occult heresy to all fit priests of their dioceses.

*Colleo-  
tanea, n.  
153, 155*

## THE EXTRAORDINARY FACULTIES

### Formula C

(1) *Recitandi privatim, legitima concurrente causa, matutinum cum laudibus diei sequentis statim elapsis duabus horis post meridiem, eandemque facultatem ecclesiasticis viris sive saecularibus sive regularibus communicandi.*

(2) *Retinendi ac legendi libros ab Apostolica Sede prohibitos, etiam religionem ex professo agentes, ad effectum eos impugnandi, quos tamen diligenter custodiat ne ad aliorum manus perveniant, exceptis astrologicis, iudicialiis, superstitionis ac obscenis ex professo ; eandemque facultatem etiam aliis concedendi, parce tamen et dummodo prudenter praesumere possit nullum eos ex huiusmodi lectione detrimentum esse passuros.*

(3) *Dispensandi cum diaconis utriusque cleri super defectu aetatis quatuordecim mensium, ut promoveri possint ad sacerdotium, si alias idonei fuerint.*

(4) *Permittendi parochis sibi subiectis, dummodo iusta et legitima causa concurrat, ut iis diebus festis, quibus fideles apostolica auctoritate soluti sunt ab obligatione missam audiendi, ipsi ab applicanda missa pro populo abstinere valeant, dummodo pro eodem populo in eiusmodi missa specialiter orent.*

(5) *Permittendi Catholicis sibi subiectis, ut feriis sextis, sabbatis aliisque diebus quibus carniū esus vetatur, acatholicis, si in eorum mensa esse contigerit, carnes praebere valeant, dummodo tamen*

*absit ecclesiasticae legis contemptus et eiusmodi facultate sobrie multaque circumspectione utantur, ne scandalum in Catholicos vel heterodoxis ingeratur.*

(6) *Deputandi aliquem sacerdotem in locis sibi subiectis cum facultate consecrandi iuxta formam in pontificali Romano praescriptam, calices, patenas et altarium lapides, adhibitis tamen sacris oleis ab episcopo catholico benedictis.*

(7) *Impertiendi quater in anno intra fines suae dioecesis in solemnioribus festis benedictionem papalem, iuxta formulam typis impressam atque insertam cum indulgentia plenaria ab iis lucranda qui vere poenitentes, confessi ac sacra communione refecti eidem benedictioni interfuerint, Deumque pro sanctae Fidei propagatione et S.R.E. exaltatione oraverint.*

(8) *Declarandi privilegiatum in qualibet ecclesia suae dioecesis unum altare dummodo aliud privilegiatum non adsit, pro cunctis missae sacrificiis quae in eodem altari celebrabuntur a quocumque presbytero saeculari vel cuiusvis ordinis regulari.*

(9) *Benedicendi coronas precatorias, cruces et sacra numismata iisque applicandi indulgentias iuxta folium typis impressum atque insertum, necnon erigendi confraternitates B.M.V. de Monte Carmelo, SSmi Rosarii et Bonae Mortis cum applicatione omnium indulgentiarum et privilegiorum quae Summi Pontifices iisdem confraternitatibus imperti sunt; addita insuper potestate has facultates communicandi presbyteris sacro munere fungentibus.*

(10) *Erigendi in locis suae dioecesis in quibus non adsint PP. Franciscas pium exercitium Viae Crucis cum applicatione omnium indulgentiarum et privilegiorum quae Summi Pontifices eiusmodi exercitium peragentibus imperti sunt, addita insuper potestate hanc facultatem communicandi presbyteris sacro munere fungentibus.*

(11) *Promovendi clericos sibi subiectos ad subdiaconatum aliosque ordines maiores usque ad presbyteratum inclusive titulo missionis praestito tamen ab eisdem clericis iuramento antequam subdiaconi ordinentur, quo spondeant ad instar pontificiorum alumnorum suae dioecesi vel missioni se esse perpetuo inseruituros.*

(12) *Delegandi benedictionem campanarum, quamcumque eam ipsi absque gravi incommodo perficere nequeant, sacerdotibus sibi benevisis, servato ritu pontificalis Romani, atque adhibitis oleis et aqua ab episcopo benedictis; necnon etiam sine aqua ab episcopo benedicta si gravis causa concurrat.*

(13) *Et praedictae facultates gratis et sine ulla mercede exercentur, nec illis uti possint extra fines suae dioecesis.*

*Formula D*

(1) *Dispensandi super impedimento cognationis spiritualis inter levantem et levatum.*

(2) *Dispensandi in casibus occultis et in foro conscientiae tantum super primo et secundo gradu simplici et mixto affinitatis ex copula illicita provenientibus in linea sive collateralis sive etiam recta, dummodo si de linea recta agatur nullum subsit dubium quod coniux possit esse proles ab altero contrahentium genita, tam in matrimoniis scienter vel ignoranter contractis quam in contrahendis.*

(3) *Dispensandi cum suis subiectis super impedimento disparitatis cultus quatenus sine contumelia Creatoris fieri possit, et dummodo cautum omnino sit conditionibus ab ecclesia praescriptis ac praesertim de amovendo a catholico coniuge perversionis periculo, deque conversione coniugis infidelis pro viribus curanda ac de universa prole utriusque sexus in catholicae religionis sanctitate omnino educanda: servata in reliquis adiecta instructione typis impressa; excepto tamen casu cum viro vel muliere Iudaeis nisi adsit periculum in mora: tum vero singulis triennii referat quot in casibus dispensaverit.*

(4) *Dispensandi cum suis subditis, super impedimento impedi-ente mixtae religionis dummodo cautum omnino sit conditionibus ab Ecclesia praescriptis prout in superiori num. 3.*

(5) *Dispensandi in matrimoniis mixtis iam contractis non item in contrahendis, super gradibus consanguinitatis et affinitatis super quibus apostolicam facultatem pro catholicis iam obtinuit, quatenus pars catholica, praevia absolutione ab incestus reatu et censuris cum parte acatholica rite et legitime matrimonium contrahere de novo possit, prolemque susceptam ac suscipiendam legitimam declarandi, dummodo cautum omnino sit conditionibus ab Ecclesia praescriptis prout in superiori num. 3.*

(6) *Sanandi in radice matrimonia contracta quando comperitur adfuisse impedimentum dirimens super quo ex Apostolicae Sedis indulto dispensare ipse possit, magnumque fore incommodum requirendi a parte innoxia renovatione consensus, monita tamen parte conscia impedimenti de effectu huius sanationis.*

(7) *Absolvendi contrahentes in omnibus et singulis casibus supra expositis dummodo opus sit, ab incestus reatibus et censuris, imposita pro modo culparum congrua poenitentia salutari, prolemque susceptam ac suscipiendam legitimam declarandi.*

(8) *Subdelegandi praesentes facultates suo vicario generali quoties*

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*absit a residentia vel legitime sit impeditus, atque duobus vel tribus presbyteris sibi benevisis in locis remotioribus propriae dioecesis pro aliquo tamen numero casuum urgentiorum in quibus recursus ad ipsum haberi non possit.*

*Voluit autem Sanctitas Sua et omnino praecepit ut praedictus episcopus superioribus facultatibus iustis dumtaxat gravibusque accedentibus causis et gratis utatur, iniuncta tamen aliqua congrua eleemosyna in pium opus arbitrio ipsius episcopi eroganda, atque ut elapso decennio (vel quinquennio) de singulis dispensationibus concessis certiorare debeat Apostolicam Sedem.*

#### *Formula E*

*Dispensandi in utroque foro cum Catholicis eius iurisdictioni subiectis, in matrimoniiis sive contractis sive contrahendis, super sequentibus impedimentis.*

(1) *Super impedimento primi gradus affinitatis in linea collateralis ex copula licita provenientis (pro decem casibus).*

(2) *Super impedimento secundi gradus consanguinitatis vel affinitatis admixti cum primo in linea transversali (pro sexaginta casibus).*

(3) *Super impedimento secundi gradus consanguinitatis vel affinitatis in linea transversali aequali (pro centum casibus).*

(4) *Super impedimento publico primi gradus affinitatis ex copula illicita provenientis in linea sive collateralis sive etiam recta (pro triginta casibus), dummodo si de linea recta agatur nullum subsit dubium quod coniux sit proles ab altero contrahentium genita.*

*Articuli Finales. Insuper Sanctitas Sua praedicto episcopo facultatem concessit in omnibus et singulis casibus superius expositis absolvendi contrahentes, dummodo opus sit, ab incestus reatibus et censuris, imposita pro modo culparum congrua poenitentia salutari, ac prolem tam susceptam quam suscipiendam legitimam declarandi.*

*Voluit autem eadem Sanctitas Sua ac omnino praecepit, ut praedictus episcopus iisdem facultatibus urgentissimis dumtaxat concurrentibus causis et gratis utatur, iniuncta tamen aliqua congrua eleemosyna in pium opus arbitrio ipsius episcopi eroganda.*

*Tandem SSmus Pater eidem episcopo potestatem fecit praedictas facultates subdelegandi suo vicario generali quoties a propria residentia absit vel sit legitime impeditus atque duobus vel tribus presbyteris sibi benevisis in locis remotioribus propriae dioecesis, pro*

*aliquo tamen numero casuum urgentiorum in quibus recursus ad ipsum haberi non possit.*

PROTOCOL. *See* INSTRUMENTS

PROTONOTARY. *See* PRELATES

### PROVINCIAL COUNCIL

1. A provincial council is one to which the bishops of a province are convoked by legitimate authority.

2. The ordinary convener is the metropolitan; and, if he be prevented, the senior suffragan bishop. He determines the place and time.

3. The members of a provincial council who *de iure* must be summoned are :

- (1) All suffragan bishops, even if not yet consecrated.
- (2) Apostolic administrators.
- (3) Vicars capitular.
- (4) Abbats *nullius*.
- (5) Chapters of cathedrals.
- (6) Neighbouring bishops who are under no metropolitan.

4. The members of a provincial council who by custom must also be called are :

- (1) Coadjutor bishops with or without rights of succession.
- (2) Any visiting prelates of episcopal rank.
- (3) Mitred abbats of canonically erected houses within the province.

- (4) Provincials of regulars.
- (5) Rectors of the greater seminaries.
- (6) Canonists and theologians taken by the bishops.

5. All priests or ecclesiastics who, thinking themselves injured, may present their grievances to the council.

Ferraris,  
*in loco*,  
n. 26

6. The laity may be invited either to act as notaries, or to give advice upon difficult matters or to represent their wishes.

7. Those only have a decisive vote who exercise episcopal or quasi-episcopal jurisdiction within the province. All other bishops present have by right only a consultative voice, though the council may grant them a decisive voice. The same applies to the procurators of absent bishops.

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8. Cathedral chapters, mitred abbats, and the others who by custom are admitted, have only a consultive voice.

9. The council, once duly opened, cannot be dissolved by the metropolitan without the consent of the suffragans.

10. In the council the metropolitan has no casting vote ; and decisions are arrived at by a majority.

11. The subjects within the competency of provincial councils are the correction of excesses, arranging controversies, promoting discipline, &c. But matters concerning the Church in general, or which are against the *ius commune*, are entirely beyond their competency. As regards the council's power in matters of faith, Bellarmine holds :

(1) It can judge special cases of manifest heresy in individuals and can excommunicate them.

(2) It can pronounce upon a matter of heresy itself which is plain, and in reference to which there is already the unanimous opinion of theologians.

*De Conciliis*, c. x.

(3) It can even define a doubtful point of doctrine, if delegated by the Holy See, or if its decision be sent to the Pope and confirmed by him.

Sess. xxiv.  
c. 2, d. r.

12. The Council of Trent orders that provincial synods should be held every three years. When a council is to be held a formal indiction is issued by the metropolitan or other convener to the suffragan bishops indicating the place and the date of the council. An edict is also published to the faithful of the province so that all who by right, custom, or privilege should be present may know of the holding of the council ; and also 'any others, who may consider, upon whatever grounds, that they ought to be present,' should likewise know and put in their claim.

13. At the provincial synod a mode of life is prescribed by decree. The following is from the First Provincial Council of Westminster :

2 Cor. iii. 7

(1) 'As neither he that planteth nor he that watereth is anything, but God alone Who giveth the increase, and as from Him is all our sufficiency, and without Him we of ourselves can not even meditate any good, all our dependence must be placed upon Him that the Holy Spirit may illumine our hearts and bring our counsels to a happy end. Wherefore we enjoin upon all present at this synod so to live during it as to aim at pleasing God, praying without ceasing that our Lord's plentiful grace may descend upon us.

(2) 'Let all, therefore, in the morning spend some time in meditation, and either offer to God the unbloody Victim or refresh themselves day by day with this heavenly food.

(3) 'In the corridors and rooms let there not be heard uproar nor the noise of many talkers, nor the footsteps of persons walking. Even at time of recreation let reserve be apparent in gait, in countenance, and in conversation; so that should anyone speak he may utter the words of God; nor, since they are to receive a holier law from our Lord, let them, like the Israelites in the desert, be caught in frivolity and deservedly suffer chastisement from Him. 1 Peter  
iv. 11

(4) 'Let there be a table common to all who assist at the synod, simple and frugal, which should be seasoned with the reading of the Holy Scripture and the canons of the Holy Synod of Trent, as with the flavour of a spiritual salt.

(5) 'In the evening let all betake themselves at the hour appointed to their examination of conscience and usual prayers. And let benediction of the Most Holy Sacrament be given as often as the fathers wish.

(6) 'Finally, at all the congregations, let freedom of speech be granted to all; yet so that the bounds of due respect and deference be not exceeded. But let everything be done in charity, the bond of which should unite indissolubly the hearts of us all in the peace of Christ. Never let anyone occupy the time of the synod by lengthy observations; but whatever is to be said let it be stated briefly and simply, beginning with the youngest and going on to the older members.'

14. In a provincial synod certain officials are appointed, viz. the promoter, the secretaries, the masters of ceremonies, the curator, and the notary. Also to prevent loss of time if the synod were to listen to questions concerning the rights or acts of individuals, two bishops are appointed as judges to inquire into and report on the excuses of the absent or of those who wish to leave before the council is dissolved.

15. At the beginning of the council the bishops make the profession of faith.

16. The business is transacted by congregations and sessions.

17. Before the end of the council it is usual to fix the date and place for the next.

18. The decrees of a provincial council have no force until they have been revised by Rome; then they form part of the

particular law of the province. They cannot be abrogated except by another provincial council; but each individual bishop may, in most cases, relax the laws for his own diocese.

19. The decrees are revised at Rome, so that what may be too strict or inaccurate may be corrected.

20. Sometimes on the petition of the metropolitan the decrees may receive pontifical approval or confirmation; but this does not extend them beyond the province, nor does it remedy any defects that there may be in the decrees unless the confirmation be given *in forma specifica* with the clauses *ex motu proprio* and *certa scientia*.

21. It sometimes happens that in decrees that have been revised at Rome there are certain regulations which are only tolerated as temporary expedients and not approved of as perpetual arrangements. Hence it is always lawful to appeal against such regulations.

22. In England only the decrees of the First Westminster Council have been approved. A decree of S.C.P.F. dated 14 May, 1853, has these words:

‘So with certain modifications, in accordance with special instructions, they [*the cardinals of S.C.P.F.*] considered that the decrees should be approved of as well as the capitular statutes for canons and the arrangements for missionary rector, taking chiefly into account that the observance of the canon law cannot yet be established upon all points.’

23. In no English-speaking country has confirmation been given *in forma specifica*.

24. In the United States it is the custom to give a decisive vote to all bishops living within the province, whether they be coadjutors or merely titular. The Third Plenary Council of Baltimore gave also a decisive vote to two abbats-general and to the superior-general of the Congregation of the Holy Cross, and refused it to all other abbats of single monasteries.

## PROVOST

1. The provost is, in English chapters, the first dignity in the chapter.

2. His appointment is in the hands of the Holy See by the fourth rule of the Roman chancery.

3. The Westminster Council decrees as follows concerning the provost:

- (1) 'The dignity in each chapter shall be honoured with the title of provost. I. West. xi. 5
- (2) 'On the death, therefore, of a bishop, the canons shall meet after the just funeral ceremonies have been duly performed, and under the presidency of the provost they shall go through everything prescribed by law for the election of a vicar capitular; and this should be done within eight days. xii. 1
- (3) 'Let the provost know that it is his duty to see that the capitular statutes are kept, and to admit only a legitimate excuse; and in the discharge of this duty he should be supported by the other members of the chapter. IV. West. viii. 1
- (4) 'The provost shall make known to him [*the newly appointed canon*] the day of the next chapter meeting at which he may present the aforesaid letter [*of promotion*] . . . [*and after the profession of faith and declaration*] the provost shall assign a stall to the canon-elect, and in the name of the whole chapter, shall address him in convenient language.' Capitular Statutes, 6-8
- (5) 'To the provost shall belong the first stall or seat after the bishop. Ibid. 10
- (6) 'Episcopal ceremonial functions do not belong to the vicar capitular, but to the chief dignity of the chapter. Ibid. 12
- (7) 'Precedence is due to the vicar capitular before all the members of the chapter with the exception of the dignity [*provost*] or other representing the chapter. Ibid. 13
- (8) 'There shall be one dignity only: the provostship, which is reserved to the Holy See. Ibid. 26
- (9) 'For these documents [*acts of the chapter*] to be deemed authentic they must have the seal of the chapter and the signature of provost. . . . The custody of the seal belongs to the provost and to the secretary, and should be under two different kinds of lock and key. Ibid. 32
- (10) 'Extraordinary meetings [*should be held*] as often as . . . the provost of the chapter convokes them. When requested by a majority of the canons to convoke a chapter the provost is bound to do so provided the petition for it is couched in the following terms: "We, the undersigned, pray that chapter may be convened on the . . . day of . . . in the year . . . at . . . o'clock, we ourselves testifying that we require this for weighty reasons, and that the time named will be convenient for all the chapter." But the bishop's assent to an extraordinary chapter of this nature must of necessity be obtained, and he will also direct when it is to be held in his own house. Ibid. 35

*Ibid.*  
37, 38

(11) 'A quarter of an hour after the appointed time the provost . . . shall warn the canons by ringing a bell that the meeting has begun ; and all shall kneel down and say the prayer, *Adsumus, Domine*. The antiphon of the Blessed Virgin Mary, for the time of the year, shall be said at the end of chapter.' See CHAPTER.

## PUBLIC HONESTY

1. Public honesty is a diriment impediment (*q.v.*) to marriage, and comes from valid *sponsalia* (*q.v.*) or from *matrimonium ratum*.

2. It is perpetual and affects the relations of the first degree, even if the *sponsalia* be broken with mutual consent.

3. If it arise from *matrimonium ratum* it extends to the fourth degree.

## PUNCTATOR

1. The punctator is an official appointed by the chapter to note by name those who are absent from the public worship of the cathedral. By this means regularity is maintained and the distributions are also apportioned.

2. The punctators should be two in number, so if one be prevented attending the other should take his place.

3. The punctators before taking office should swear before him who deposes them that they will faithfully fulfil their duty.

4. The punctators, who may be canons or other clerics, are appointed, according to the custom of the place, for a month or a year ; and during the time of office they should not be appointed prefect of the sacristy or *hebdomadarius* (*q.v.*), as they are bound to remain in choir from the beginning to the end of the service.

5. The punctator must note as absent those who come to mass after the last *Kyrie*, those who do not chant, those who talk or who wander about in the choir, who leave before the end of mass, and those who do not wear the choral dress.

6. The S.C.C., 24 May, 1674, reprobated the custom of not noting canons as absent who come before the first nocturn is finished or before the end of the first six psalms in the ferial office.

7. Where there is no exact point prescribed by law when absentees are to be noted, the local custom must be followed, or the chapter pass a statute defining the time after which a member of the choir is to be noted as absent.

S.C.C.  
26 April,  
1664 ; and  
13 July,  
1686

## PUNISHMENT

1. Punishment is the vengeance for evil doing, and it is devised for the amendment of man.

2. Punishment belongs to the external *forum*, and is in general either ordinary or extraordinary.

3. Punishment is :

(1) Civil : that is, not tending to public vengeance, but to the private good of the wounded party.

(2) Criminal : that is, tending to public vengeance for a public outrage.

4. Civil punishment is of three kinds :

(1) Conventional, by agreement of the parties.

(2) Legal, imposed by law.

(3) Judicial, imposed by a judge.

5. Criminal punishment is of two kinds :

(1) Capital, involving loss of life.

(2) Non-capital, and this may be either corporal or pecuniary.

6. Punishment may be inflicted in two ways :

(1) *Sententia lata* : that is, *ipso facto*, and with only a sentence declaratory, not condemnatory.

(2) *Sententia ferenda* : that is, requiring a sentence condemnatory.

7. A punishment *ferenda sententia* does not oblige before sentence condemnatory. But punishment *lata sententia* in those matters that do not require external execution obliges in conscience before the sentence declaratory ; but if they require external execution it does not bind unless there is affixed to the clause, *Alia etiam declaratione non secuta*. It is well to note that a sentence declaratory of a crime committed requires citation (*q.v.*), and can be the matter of an appeal (*q.v.*).

8. Transgressors of a law incur the penalty though unaware thereof. The only exception is in case of censure (*q.v.*).

9. A lower judge cannot, as a rule, increase or diminish the penalties laid down by law.

10. In punishment seven things have to be considered :

(1) The cause.

(2) The person.

(3) The place.

(4) The time.

(5) The quality..

(6) The quantity.

(7) The result.

Sometimes on account of these, for just reasons, a lower judge can increase or diminish the penalty.

*Cf. Trent,  
Sess. xxv.  
c. 3, d. r.*

11. In the case of pecuniary penalties the bishop is bound to apply the fines to pious uses. He cannot use them to repair his house, to pay his vicar general, nor for the expenses of his tribunals, nor for his own personal use even if poor.

12. Censures are sometimes used as vindictive punishments. *See SUSPENSION ex informata conscientia.* Detrusion in a monastery for a period or for the purpose of the spiritual exercises is a recognised form of clerical vindictive punishment.

**QUASI-DOMICILE.** *See DOMICILE*

**QUESTORS.** *See MENDICANTS*

### RECOMMENDATIONS

1. In the appointment of bishops the privilege of recommendation is granted to the chapters in England, Ireland, and Scotland, and to the diocesan consulters in the United States. The bishops also enjoy the same privilege.

2. Recommendation is of two kinds :

(1) Private, which any individual has a right to make.

(2) Solemn, which is made in a formal way by authorised bodies.

3. This last kind of recommendation is in no sense of the word equivalent to election, nomination, or presentation, and gives no right or claim to those recommended.

21 April,  
1852

4. In the Instruction S.C.P.F. as to recommendations to the episcopate in England it is said :

‘The Sacred Congregation has deemed it proper to notice and declare that in all this there is merely a recommendation, so that the Apostolic See may exercise its right of choosing other than those named, when it may seem necessary or opportune.’

xii. 5

5. The First Council of Westminster decreed :

‘This faculty of recommendation we so refer to the benign concession of the Holy See that not at all can any right of election or nomination be pretended, but that it shall ever be free to the Holy Father to use his right of electing another than those recommended as often as he shall deem it expedient.’

6. The same has been declared by the S.C.P.F. in all cases where the privilege of recommendation has been granted.

## RECTORS

1. Rectors of missions or parishes that are not under the rights of patronage (*q.v.*) are appointed by the bishop. There are two kinds of rectors recognised :

(1) Missionary rectors (*q.v.*), who are irremovable.

(2) Rectors who are appointed *ad nutum*.

2. Rectors not being parish priests hold the position of vicars to the bishop, who is alone bound to the mass *pro grege* (*q.v.*). Although appointed *ad nutum* the very nature of their office induces a quasi-perpetuity. For if the Church, as the learned Santi says, vehemently abhors in her government all arbitrary and unjust methods of procedure, so on the other hand she recognises that the general welfare of souls is better consulted by one who knows his sheep and is known by them. As for this reason perpetuity is granted to parish priests, so is it extended definitely to missionary rectors and *secundum quid* to the ordinary rector. *Cf. i. 225*

3. The rector, appointed *ad nutum*, can be removed indeed without a canonical reason and without a canonical process. But he cannot be moved except for a reasonable cause ; nor with any injury to his reputation such as would be found in removing a rector from a good mission to a poor one or in making him a curate.

4. Rectories being vicariates are manual benefices, and the S.C.E.R. and the S.C.C. have decided that a *causa levis* is not sufficient for removing a rector *ad nutum* against his will. Such a one can have a *recursus* (*q.v.*) to the Holy See ; for an appeal (*q.v.*) cannot *de iure* stand in such cases, for they are not done as a judicial sentence.

11 Sept.  
1584 ;  
18 March,  
1854

5. As regards the rights of a rector, he, being in England and elsewhere a quasi-parish priest, has quasi-parochial rights. What these may be can be deduced from the particular laws of each country which assign to him many of the rights and duties of a canonical *parochus* (*q.v.*).

6. The First Council of Westminster lays down the following decrees concerning rectors of churches :

‘Whosoever presides over a church, whether he be a simple missionary or one who is honoured with the title of missionary rector, must be considered as the steward of God to whom a part of the Lord’s vineyard is entrusted for cultivation. He should therefore be a profitable and faithful servant, labouring



in all things, mindful that the captain of the ship runs the same chances of loss or safety as his freight.

(1) ' Whosoever, therefore, is set over a congregation should in the hands of the bishop or of his vicar make profession of the faith (*q.v.*), which he will engage to preach in all its wholeness to the faithful committed to him.

(2) ' In case this has not been already done, he should go through the whole extent of the district of his pastoral solicitude, and write an exact report of it and let him make out a *liber status animarum* in the manner prescribed in the Roman ritual, as far as circumstances will permit.

(3) ' Let him accurately keep registers of those baptised, confirmed, dead, and of those married.

(4) ' He must be careful to keep in good repair all sacred edifices, schools, presbytery, and all things belonging to the church. He should innovate nothing whether by addition or alienation (*q.v.*) or notably changing without consulting the bishop.

(5) ' He should examine diligently into the obligations of masses and have a list of them hung up in the sacristy; let him not accept new perpetual ones without the sanction of the bishop: if those already to be fulfilled appear too burthensome or there be no adequate endowment let him apply to the bishop or lay the matter before him at the time of visitation.

(6) ' If any of the faithful wish to found an anniversary or daily mass the matter must be dealt with by the bishop; and the sum contributed for this object must be profitably invested, observing the canonical sanctions as far as the circumstances of time and place allow, so as to produce annual interest for a perpetual endowment.

(7) ' He should be attentive in visiting and assisting the sick and dying; and by no means abandon them altogether, after they have received the sacraments, but continue to visit them often, even daily if he have time, and assist them in their agony. In a long illness, where the sick person is never out of danger, he should administer the Holy Viaticum (*q.v.*) more frequently. It is a truly praiseworthy practice, where there be no cemetery, to perform the funeral rites at the home of the deceased if the corpse cannot (as is desirable) be brought to the church. . . .

(8) ' A priest should be careful not to incur any suspicion of avarice by meddling with the making of wills, at least if the dying person leaves a portion of his goods for the benefit of the Church or the poor. He should, however, not be deterred by the

foolish clamours of some persons from doing his duty of warning those who have unjustly seized that now, at length, they make restitution ; or of exhorting those who have never shown mercy to the poor that now, at least, they redeem their sins with alms.

(9) 'He should establish among his flock whatever is calculated to foster piety. He should open both day and Sunday schools and also evening or what are called night schools. He should found a confraternity of Christian Doctrine the members of which may help in the schools, and he should frequently visit his schools. He should promote devotion to the Passion of our Lord and to the Blessed Virgin : for instance, by erecting the Way of the Cross, by reciting the Rosary, and also by directing the piety of the faithful to the most Sacred Heart of Jesus and to the immaculate Heart of His most holy Mother ; and by more frequently giving Benediction of the most Holy Sacrament.

(10) 'But let him take care to introduce nothing that has not been approved of by the Church. Whenever it is the custom, as in lesser churches, to recite both before and after mass certain prayers in the vernacular tongue, it is our desire that no prayers and particularly no litanies be said which are not sanctioned by the Church or approved by the bishop. It would also seem desirable that the synod should depute certain pious persons to compile prayers from approved sources, to be recited everywhere according to a uniform rite.

(11) 'But we especially desire that as often as the bishop shall deem it expedient the priest provide for his flock a mission or spiritual exercise to be given by religious or by the clergy. The result will be that those who have fallen asleep in sin will be awakened and arise, that the tepid and weak will be animated and strengthened, and the just and devout be more fervently inflamed with the desire of piety.

(12) 'The appointment of the rector of a church, either ordinary or missionary, belongs entirely to the bishop ; so that no right of preferment is acquired because a priest has held the second place in a mission or even temporarily has administered it.

(13) 'Let him heed that he do not take upon himself burthens, temporal or spiritual, that will devolve upon his successors ; for example, receiving money at interest, or promising to the faithful masses to be celebrated in perpetuity for benefactors in order to induce them to found pious works or even to build churches.

(14) 'Those who have the cure of souls must remember that

they are bound to residence, and consequently no one should be absent without a just cause, nor frequently, from the place of his ministry : and he who wishes to leave home for more than a few days should obtain in writing permission from the bishop or the vicar general.

xxv. 1-14 (15) 'A priest who wishes to leave the diocese to which he is attached must be furnished with a letter of excommunication from his ordinary ; and no bishop can aggregate to his diocese any stranger priest who is not possessed of such a letter.'

xxix. 7 7. The Second Council of Westminster has decreed :

'We determine that assistant priests ought to inform the principal missionary of the church as often as they leave home even for a day ; and that no missionary, either rector or assistant, ought to be absent on a Sunday or a holiday of obligation without leave of the bishop or vicar general, except in case of urgency ; in which case the priest on leaving home ought, as soon as possible, to inform the bishop of the said urgency, and should leave a suitable priest to supply his place.'

8. Rectors must pay the *cathedraticum* (q.v.) according to the decree of the Third Westminster Council, viz. :

xvii. 'Priests ordained under the title of the mission who are in the receipt of stipends from any church or oratory ; those who have the care of souls ; those who preside over churches or public oratories, unless they are able to prove a special exemption.'

I. West. xiii. 6 9. 'If there are two or more priests at the same mission, we decree that one is to be appointed as the first who shall bear the cure of souls and the management of the church or congregation.' To this the Fourth Council added 'that all the others are to carry on their share of the cure of souls in complete dependence upon the head priest.'

x. 2

10. In beautiful language the fathers of the Fourth Council of Westminster dwell on the ascetical and pastoral duties of those entrusted with the cure of souls. Among the directive precepts is the following :

'All therefore to whom the cure of souls has been entrusted should know that their mission is to all persons, non-Catholics as well as Catholics, throughout the whole of the district in which they have been placed. We are debtors to all ; nor do we know to whom the Lord may reveal by our means His salutary grace. "Other sheep I have that are not of this fold : and them also must I bring in, and they shall hear My voice ; and there shall be one fold and one Shepherd." It is, therefore, not enough, to hold forth

the word of life and the aids to piety towards those only who come for them of their own accord, but we are bound to seek out and bring back to God those sheep especially that are lost and those that falling away from piety and are lapsed and sunk in the abyss of vices will not wish to hear the pastor's voice. And there is another apostolic mission we have. For there are many in England who, born of Catholic parents, are Catholics in faith, at least, and name, yet brought up in non-Catholic orphanages or at schools established under the public law, have had no Catholic education, completely forsake the worship of God. Truly these are the sheep of whom the Saviour speaks when He says: "The Son of Man cometh to seek and to save that which was lost." Finally, before the eyes of our missionaries lies our own England, holy of old, beloved of God, fertile in saints as the Paradise of the Lord, but now indeed woefully changed, yet beauteous still and exceeding dear for the memories of its saints. The harvest indeed, therefore, is great; the crops are ripening: let us put in the sickle; *Ibid.* 8 let us bind up the sheaves with unwearied patience, with a firm trust and an inexhaustible charity.

11. 'The rector of the church has by office the duty of keeping the archives, although he may assign it to others; he, however, will have to bear the responsibility of filling up the books and of the custody of all things consigned to the repository of the archives (*q.v.*). In this repository should be placed and carefully kept all the decrees of provincial and diocesan synods, a complete series of the bishops' pastoral letters and copies of all instructions of that nature issued by the ordinary.' *Ibid.* 10

12. 'At the First Council of Westminster priests were cautioned against undertaking the management of worldly business. And taught by experience, we judge that this most wise prohibition should be renewed. Moreover, we command all to persist in refusing the custody of money, and not to keep other persons' savings; especially those of the poor, or allow them to be invested; lest, deceived by the snares of wicked people or misled by their own want of care and attention, they allow the deposits so to be lost as to be liable to be brought before a secular court of law; or, what is worse, tarnish the priestly name with the suspicion of broken faith, or avarice, or even injustice.' *Ibid.* 12

13. 'There should be regularity in everything. The priest should say mass at the appointed time; and although he should be always ready to hear confessions, he should especially be found in the confessional or at least in the church on the days and at the *IV. Concil. xi. 2*

hours given out, lest through lack of order and method scandal and losses of souls arise. Preserve order, and order will preserve you.

*Ibid.* 5 14. 'The assistants receive indeed their faculties from the bishop; but for the preservation of order we command them to use them only under the direction of the rector of the church; and hence in the paper of faculties there should be the following or similar words: "dependently upon the rector of the church to which you are appointed."

*Ibid.* 6 15. 'For the rector has charge of the church and the people, the schools and the presbytery, and all the goods of the mission and in fine of all the clergy who serve it; and hence he alone and exclusively is accountable to the bishop for everything. It is true that by law or by custom, all rectors and their assistants usually dwell in the same presbytery; but the presbytery is the rector's house, while he discharges the duty of rector and has faculties in the diocese, and to him alone belongs the right of administering and ruling it: and not only the right but the obligation as well: "If anyone knoweth not how to rule his own house, how shall he have care over the Church of God?" Let him understand, however, of whose spirit he is, and as mutual charity and true respect among all priests should be maintained constantly, let him be as the senior among the assistants, not as domineering over the clergy, but rather as their father, or even as an elder brother. But they should be trained and instructed as true ministers of the Good Shepherd, who may be worthy and capable of ruling a mission in their turn. From the fact, however, that the cure of souls is chiefly required from the rectors of missions, their assistants should not imagine that they are free from this weighty burthen; for it is their duty, dependently on the rector, to help him by preaching, hearing confessions, teaching children the Catechism, visiting the sick, administering to them the sacraments, and by fulfilling the other duties of a missionary.

16. 'Since the dividings of the Holy Spirit are manifold and unsearchable, and the faithful are called to various grades of perfection, some to one, others to another, it is not enough for a priest to distinguish with knowledge "between leprosy and leprosy" without understanding how to distinguish between spirit and spirit, lest he may give ear to the spirit of man or even of the evil one instead of the Spirit of God, and led astray, he may drag others with him into error. For not only those of the faithful of cultivated intellects, but also uneducated and simple people, are at times

called to the highest state of perfection. The director of souls, therefore, should have, if not experience of his own, at least such a knowledge and skill in the ascensions of the heart to God and progress in prayer as to be able to strengthen beginners in the purgative way, direct in the illuminative way those who have made progress, and lead by the hand the more perfect in the unitive way to higher paths. For in every flock there are some who are called by God to the life of the counsels and look for a knowledge of the spiritual life from the lips of the priest. Hence let us strive lest in the hidden life of God the sheep be found to be outrunning the shepherd. That is a wondrous saying of the Apostle : “ *Christ did not send me to baptize, but to preach the Gospel.*” 1 Cor. i. 1 Accordingly we have it in the Council of Trent that the chief duty of bishops is to announce God’s Word to men ; and that which in the bishop’s duty is chief must assuredly be regarded as of the utmost moment in all. But as the simple and virile announcement of the Gospel is the health of hearers, so vain and inflated declamation is a scandal to the faithful and ruin to the preacher. The mysteries of the Kingdom of Heaven must not be treated as subjects for rhetorical exercises or as lucubrations of the literary art. The testimony of the Holy Spirit needs not the persuasive words of human wisdom, yea, the simplicity of divine truth loathes and rejects the loftiness of our speech, in order that our faith *may not be in the wisdom of men, but in the power of God.* 1 Cor. ii. 5 Let all leaders of souls, therefore, diligently strive to introduce nothing but what is full of simplicity and gravity in their treatment of the mysteries of the faith and in their exhortations to piety.’ xii. 5

## RECURSUS

1. A *recursus* is a demand in the form of a petition to a superior for the purpose of obtaining from his kindness the annulment of a sentence of a court from which there is no appeal. It is therefore an extra-judicial application to the supreme power as a last resort.

2. It can only have effect when the supreme court has passed a definite sentence extra-judicial or judicial ; and hence when there is no appeal open for revision of the sentence.

3. An appeal is based on right : a *recursus* is founded on the personal kindness of the superior.

4. Anyone for any reason can have *recursus* to the Holy See, but it is an extraordinary remedy and can only be used as such.

N N

5. The *recursus* to the Pope must be made within two years after the definite sentence of the supreme court is made known.

6. The effect of a *recursus* is devolutive ; and hence it does not prevent the execution of the sentence.

### REGISTERS. See LIBER STATUS ANIMARUM

### REGULAE IURIS

The following rules are taken from the *Sext*, and are due to Boniface VIII. They are conceived in the form of axioms, and it seems useful to leave them in the original Latin. It is necessary to know them, for they are of the greatest use in interpreting and applying Canon Law ; but it is well to remember that they suffer from the dangers inherent in all general principles, i.e. wrong interpretation and wrong application.

REGULA PRIMA.—*Beneficium ecclesiasticum non potest licite sine institutione canonica obtineri.*

2. *Possessor malae fidei ullo tempore non praescribit.*
3. *Sine possessione praescriptio non procedit.*
4. *Peccatum non dimittitur, nisi restituatur ablatum.*
5. *Peccati venia non datur nisi correcto.*
6. *Nemo potest ad impossibile obligari.*
7. *Privilegium personale personam sequitur et extinguatur cum persona.*
8. *Semel malus, semper praesumitur esse malus.*
9. *Ratum quis habere non potest, quod ipsius nomine non est gestum.*
10. *Ratihabitationem retrahere et mandato non dubium comparari.*
11. *Cum sint partium iura obscura, reo favendum est potius quam actori.*
12. *In iudiciis non est acceptatio personarum habenda.*
13. *Ignorantia facti non iuris excusat.*
14. *Cum quis in ius succedit alterius, iustam ignorantiae causam censetur habere.*
15. *Odia restringi et favores convenit ampliari.*
16. *Decet concessum a principe beneficium esse mansurum.*
17. *Indultum a iure beneficium non est alicui auferendum.*
18. *Non firmatur tractu temporis quod de iure ab initio non subsistit.*

19. *Non est sine culpa, qui rei, quae ad eum non pertinet se immiscet.*
20. *Nullus pluribus uti defensionibus prohibetur.*
21. *Quod semel placuit, amplius displicere non potest.*
22. *Non debet aliquis alterius odio praegravari.*
23. *Sine culpa, nisi subsit causa, non est aliquis puniendus.*
24. *Quod quis mandato facit iudicis, dolo facere non videtur, cum habeat parere necesse.*
25. *Mora sua cuilibet est nociva.*
26. *Ea quae fiunt a iudice, si ad eius non spectant officium, viribus non subsistunt.*
27. *Scienti et consentienti non fit iniuria neque dolus.*
28. *Quae a iure communi exorbitant nequaquam ad consequentiam sunt trahenda.*
29. *Quod omnes tangit debet ab omnibus approbari.*
30. *In obscuris minimum est sequendum.*
31. *Eum qui certus est certiorari ulterius non oportet.*
32. *Non licet actori quod reo licitum non existit.*
33. *Mutare consilium quis non potest in alterius detrimentum.*
34. *Generi per speciem derogatur.*
35. *Plus semper in se continet quod est minus.*
36. *Pro possessore habetur qui dolo desiit possidere.*
37. *Utile non debet per inutile vitiari.*
38. *Ex eo non debet quis fructum consequi quod nisus extitit impugnare.*
39. *Cum quid prohibetur prohibentur omnia quae sequuntur ex illo.*
40. *Pluralis locutio, duorum numero est contenta.*
41. *Imputari non debet ei per quem non stat, si non faciat quod per eum fuerat faciendum.*
42. *Accessorium naturam sequi congruit principalis.*
43. *Qui tacet consentire videtur.*
44. *Is qui tacet, non fatetur ; sed nec utique negare videtur.*
45. *Inspicimus in obscuris quod est verisimilius, vel quod plerumque fieri consuevit.*
46. *Is qui in ius succedit alterius, eo iure quo ille uti debebit.*
47. *Praesumitur ignorantia ubi scientia non probatur.*
48. *Locupletari non debet aliquis cum alterius iniuria vel iactura.*
49. *In poenis benignior est interpretatio facienda.*
50. *Actus legitimi conditionem non recipiunt neque diem.*
51. *Semel Deo dicatum non est ad usus humanos ulterius transferendum.*
52. *Non praestat impedimentum quod de iure non sortitur effectum.*



53. *Cui licet quod est plus, licet utique quod est minus.*
54. *Qui prior est tempore potior est iure.*
55. *Qui sentit onus sentire debet commodum et e contra.*
56. *In re communi potior est conditio possidentis.*
57. *Contra eum qui legem dicere potuit apertius est interpretatio facienda.*
58. *Non est obligatorium contra bonos mores praestitum iuramentum.*
59. *Dolo facit qui petit quod restituere oportet eundem.*
60. *Non est in mora qui potest exceptione legitima se tueri.*
61. *Quod ob gratiam alicuius conceditur, non est in eius pendium retorquendum.*
62. *Nullus ex consilio, dummodo fraudulentum non fuerit, obligatur.*
63. *Exceptionem obiiiciens non videtur de intentione adversarii confiteri.*
64. *Quae contra ius fiunt debent utique pro infectis haberi.*
65. *In pari delicto vel causa potior est conditio possidentis.*
66. *Cum non stat per eum ad quem pertinet, quominus conditio impleatur, haberi debet perinde ac si impleta fuisset.*
67. *Quod alicui suo non licet nomine nec alieno licebit.*
68. *Potest quis per alium quod potest facere per seipsum.*
69. *In malis promissis fidem non expedit observari.*
70. *In alternativis electoris est electio et sufficit alterum adimpleri.*
71. *Qui ad agendum admittitur est ad excipiendum multo magis admittendus.*
72. *Qui facit per alium est perinde ac si faciat per seipsum.*
73. *Factum legitime retractari non debet, licet casus postea veniat a quo non potuit inchoari.*
74. *Quod alicui gratiose conceditur trahi non debet aliis in exemplum.*
75. *Frustra sibi fidem quis postulat ab eo servari cui fidem a se praestitam servare recusat.*
76. *Delictum personae non debet in detrimentum Ecclesiae redundare.*
77. *Rationi congruit ut succedat in onere qui substituitur in honore.*
78. *In argumentum trahi nequeunt quae propter necessitatem aliquando sunt concessa.*
79. *Nemo potest plus iuris transferre in alium quam sibi competere dignoscatur.*
80. *In toto partem non est dubium contineri.*

81. *In generali concessione non veniunt ea quae quis non esset verisimiliter in specie concessurus.*

82. *Qui contra iura mercatur, bonam fidem praesumitur non habere.*

83. *Bona fides non patitur ut semel exactum iterum exigatur.*

84. *Cum quid una via prohibetur alicui ad id alia non debet admitti.*

85. *Contractus ex conventionem legem accipere dignoscantur.*

86. *Damnum quod quis sua culpa sentit sibi debet, non aliis imputare.*

87. *Infamibus portae non pateant dignitatum.*

88. *Certum est quod is committit in legem qui legis verba complectens contra legis nititur voluntatem.*

To these axioms must be added eleven more taken from the Decretals.

1. *Omnis res per quascumque causas nascitur, per easdem dissolvitur.*

2. *Dubia in meliorem partem interpretari debent.*

3. *Propter scandalum evitandum veritas non est omittenda.*

4. *Propter necessitatem illicitum efficitur licitum.*

5. *Illicite factum obligationem non inducit.*

6. *Tormenta indicii non praecedentibus inferenda non sunt.*

7. *Sacrilegus est offendens rem vel personam ecclesiasticam.*

8. *Qui facit aliter quam debet facere non dicitur.*

9. *Committens unum peccatum reus est omnium quoad vitam aeternam.*

10. *Ignorantia non excusat praelatum in peccatis subditorum.*

11. *Pro spiritualibus homagium non praestatur.*

## REGULAR BISHOPS

1. Regulars who have been raised to the episcopate are bound by special laws which result from their religious profession.

2. The leave of their canonical superior is necessary before they can lawfully accept the dignity.

3. A regular bishop can take nothing from the religious house save his own writings, clothing, and breviary, under pain of suspension *a divinis*, to be incurred *ipso facto*.

4. He must keep the substance of his vows. As regards poverty, he remains incapable of acquiring property for himself, but he can freely use temporal goods for his necessary support.

Benedict  
XIII.  
Constit.  
Postulat,  
7 March,  
1725

As regards obedience, he is released from the obedience due to the superiors of his order, but he is bound more strictly to obey the Pope. The other rules and observances not repugnant to the episcopal office still bind him, and must be observed in the measure that prudence requires.

5. He retains in his episcopal dress the colour of his religious habit, and does not wear silk.

6. He recites the secular breviary in place of that of his former order.

Benedict  
XIII.  
Constit.  
cit.

7. Should he resign his see or be removed from it, he is bound to return to his religious house unless he have obtained a special papal dispensation. This law binds him under pain of deprivation of the use of pontificals ; and if he remain for one year outside the religious house without leave, he is *ipso facto* suspended *a divinis*.

## REGULARS

1. The legislation affecting regulars forms a branch of canon law which does not enter directly into the scope of this book, as it mostly concerns the internal relations of regular prelates with their subjects. Their external relations with the bishops and secular clergy are treated generally in the course of these pages as the subject occurs.

2. The principles governing their relations so far as they arise in English-speaking countries have been established by Leo XIII. in the Constitution *Romanos Pontifices*, 1881. They are as follows :

(1) *As regards exemption*. 'We hesitate not to declare that regulars dwelling in residences on the mission are exempt from the jurisdiction of the ordinary, no less than regulars living within their cloisters, except in cases expressly mentioned by the law, and, speaking generally, in those matters that have reference to the cure of souls, and the administration of the sacraments.'

(2) *Conferences*. 'We declare that all rectors of missions are bound by their office to attend the conferences of the clergy ; and, moreover, we ordain and command that vicars also and other religious men holding ordinary missionary faculties and living in residences and in small mission houses shall do the same.'

(3) *Concerning attendance at Synods*. 'We briefly reply : Let the decrees of the Council of Trent be observed.'

(4) *Appeals from synodal laws* : 'It is lawful for regulars to

appeal, but only *in devolutivo* in the case of an interpretation of such decrees as by common law, either ordinary or delegated, affect also regulars ; and in case of other decrees also *in suspensivo*, . . . (*for*) it is certain that regulars retain their exemption from episcopal jurisdiction the same as before, until such time as the authority of the Supreme Pontiff shall decide whether they have been dealt with according to law or otherwise.'

(5) *The division of missions.* 'The bishops are at liberty to divide missions provided they keep to the form laid down by the sacred Council of Trent in respect to missions that are really or properly so-called parishes ; but in respect to all others provided they act in conformity with the First Provincial Council of Westminster. Moreover, in order that the interests of the mission and those who serve it may the better be provided for, we will and order that the opinion of the rector shall be asked for likewise, which laudable practice, as we are informed, is already customary ; and if the mission be served by members of a religious body, then shall the superior of the order be consulted, leaving intact the right of appealing, if the matter require it, from the decree of the bishop to the Holy See, but only *in devolutivo*.'

(6) *The service of new missions.* 'The law is not so far adverse to the religious as to forbid the rector being chosen from them ; but neither does it favour their claim to be chosen in preference to others. The bishop, therefore, on approaching the question finds it and his power untouched, and he is free to follow his own choice.'

(7) *Cemeteries and pious establishments.* 'We briefly pronounce our decision, which is, that the regulations of the sacred canons and of the apostolic constitutions be observed.'

(8) *Elementary schools.* 'We . . . declare that bishops have the right of visitation in regard to all such things as poor schools in the missions and parishes of regulars just as in those of seculars.'

(9) *Colleges and other schools.* 'Our will is that the privileges bestowed upon them (regulars) should remain firm and entire.'

(10) *New establishments.* 'It is unlawful for religious orders to create for themselves new establishments by erecting new churches, or opening monasteries, colleges, or schools without having first obtained the expressed licence of the local ordinary and of the Apostolic See.'

(11) *Changing existing establishments to other uses.* 'If the change be confined within the limits of domestic discipline, regulars will

of course avail themselves of this right, unless it should happen that the conditions of the foundation are contrary thereto . . . (*but they*) are not allowed to convert existing institutions to other uses without the expressed permission of the Apostolic See and of the ordinary of the place . . .’

(12) *Mission accounts*. ‘We decree that members of religious bodies are bound to give an account to the bishop, and to inform him of the money given to them with a view to the missions, and how much of it and for what purposes it has been spent, just as the missionaries of the secular clergy are bound . . .’

(13) *Mission property*. ‘We ordain that in this matter members of religious bodies shall conform entirely to the regulation of the Second Provincial Council of Westminster.’

3. In an Instruction of the S.C.P.F. 30 September, 1848, it is declared ‘as a rule to go by that, with the sole exception of internal regular discipline, regular missionaries, including as expressly mentioned the Fathers of the Society of Jesus, are under the jurisdiction of the vicars apostolic as regards the entire business and direction of the missions. Moreover, the same congregation expressly declares and wishes it to be understood that if the missionary is to be considered bound by a two-faced obedience—one towards the head of the mission, the other towards the regular superior—that must always outweigh this; hence in cases of conflict between the two the former must always prevail and not be paralysed by scruples about the latter.’

4. Concerning the admission of novices the S.C.E.R. on January 25, 1848, decreed :

(1) ‘In every order, congregation, society, institute, monastery, or house, whether solemn or simple vows are made therein, and even in orders, congregations, societies, institutes, monasteries, and houses which, by reason of some privilege, are not included in ordinary law, or for some reason or other are not included in general decrees unless some special, individual and express mention is made of them, let no one be admitted to the habit without testimonial letters both from the ordinary of the place of his origin, and from the ordinary of any place where the postulant has spent more than one year after completing his fifteenth year.

(2) ‘The ordinaries, having first of all made diligent inquiries, even by secret means, as to the character of the postulant, shall in the said letters state his birth, age, character, life, repute, condition, education, learning; whether he has been prosecuted, or is under censure, irregularity, or any other canonical impediment; in debt

or liable to have to give an account for any trust. And let ordinaries understand that their consciences remain burthened as to the trustworthiness of their report; and that they are never free to refuse testimonial letters of this kind; that, however, they need only testify therein to those points in the aforesaid details on which they conscientiously deem in the Lord that they can affirm.

(3) 'The observance of this decree is strictly enjoined, even by virtue of holy obedience, upon all and every regular superior, and upon all other religious concerned, whatever their position, and though their institute be exempt and privileged and necessarily to be mentioned. And whoever in opposition to the terms of this decree admits anyone to the religious habit, by so doing he incurs the penalty of privation of all offices and of active voice, and perpetual inability of obtaining in future any offices; and he can only be dispensed from this by the Apostolic See.

(4) 'In virtue of any privilege, faculty, conduct, dispensation, or approbation of rules and constitutions whatsoever, even if obtained in a specific form by any order, institute, or religious superior from the Apostolic See, it must never be considered that any derogation is made from the decree unless the derogation be made expressly and by name, even though in the concession general derogations, however unlimited, are included. But if to any institute a dispensation in regard to this decree be at any time granted expressly, and by name, by no means can it be extended to others by virtue of any privilege whatsoever, or communications of privileges.

(5) 'Every year, on January 1, let this decree be read at the public meal under pain of privation of office and of active and passive voice, to be incurred *ipso facto* by superiors.'

5. In a letter of the S.C.P.F. 9 July, 1868, the Cardinal prefect says 'that the bishops should be engaged to avail themselves at proper seasons of their rights in reference to the admission of religious to sacred orders, and to the reception into the dioceses of those religious who have obtained an indult of secularisation.'

6. The same Sacred Congregation decreed, 7 December, 1901, that regulars before opening a new house have first to ask the permission of the S.C.P.F. and then obtain that of the ordinary.

7. The First Provincial Council of Westminster decreed:

'Since in England those bound to regular life live praiseworthy for the most part out of their monasteries—that is, exercising the sacred ministry—it is expedient likewise to treat of

them ; yet in such a way as to show that we fully admit, and in no way intend to interfere with, the privileges and exemptions they lawfully enjoy either in their houses or out of them.

xxviii. 1-5

(1) 'Missionary and public churches served by regulars are subject to the bishop's visitation. For by him, according to the Holy Synod of Trent, "it is proper that all that pertains to divine worship in the diocese should be carefully attended to and in those things where it is fitting provisions should be made." The bishop, therefore, must keep an eye to these just as he does to churches served by secular priests, in all matters that concern the divine worship, the administration of the sacraments, preaching the Word of God, and the cure of souls generally ; yet so as not to prohibit any peculiarities of rite, should there be any, in the celebration of the mass, lawfully approved of for the order attached to any church, or the observance of their own calendar.

Proverbs  
xxvii.

(2) 'Seeing that serious inconvenience may easily arise from the sudden removal or recall of regular missionaries, particularly if this happens against the wish or without consulting the bishop, this synod earnestly begs the provincials and superiors of orders, for the sake of peace and the salvation of souls, to act cordially with the bishops in reference to the appointment or removal of their missionary subjects. For as the shepherd knoweth more diligently than others the face of his sheep and considereth his own flock, and since to him the care of the sheep has been committed by the Lord, it seems befitting that what must necessarily be greatly to the harm or to the benefit thereof shall not be arranged without his knowledge, but rather, if possible, with his approval.

(3) 'A regular priest appointed by a regular superior to any mission, or to hear the confessions of seculars, must be presented to the bishop, whose duty it will be to judge of his knowledge of theology, even if he think fit by his examiners, before giving him the approbation required.

(4) 'Religious men, who discharge the duty of missionaries, should excel others in greater strictness of life, contempt of worldly things, and in the study of higher contemplation. Wherefore as long as they apply themselves to the service of missions they must be bound by those decrees which we have given above for the protection and confirmation of the clergy in goodness of life. It is therefore to be desired that they should dress as do secular priests, unless they wear the habit of their order ; refrain from the same things ; and conduct themselves in the same or even a better way.

(5) 'No new religious house shall be founded without the express permission of the ordinary.'

### REPARATIONS

1. In the question of reparation of churches the special customs of a place must be taken into consideration.

2. Where no special custom exists to the contrary the church ought to be repaired from its income.

3. If the church have no income, or insufficient for the expense, the parish priest is bound to do the repairs out of the superfluities of his benefice, the superfluities being that which is over and above what is necessary for honest support.

4. If the church be not parochial then all holding benefices in it are bound to make the repairs.

5. If the church have no income and the *beneficiarii* have only what is necessary for their support; or if their superfluity be insufficient to make the repairs, then the patron and the parishioners are bound to make them.

6. What is said of the church applies also to the repairing of presbyteries and other property belonging to the church.

7. If clerics refuse to pay for the repairs of their church from their superfluities the bishop can sequester their benefice.

8. A bishop is bound to repair his cathedral if he have superfluities. If he have them not, the burthen falls upon the chapter on the same condition. If neither have superfluities, the lower clergy can be compelled to contribute from their superfluities, and the income of vacant benefices can be taken for this purpose.

### RESCRIPT

1. A rescript is a particular ordinance or papal letter sent in reply to persons who either ask for a favour, or report on some particular affair, or ask directions for a transient object or private individual.

2. A rescript has the force of law *inter partes*: that is, for those in whose favour it is granted. Rescripts serve as precedents, and may be applied to cases of a similar kind. If they are inserted in the *Corpus Iuris* they have the force of common law.

3. There are various kinds of rescripts :



(1) Rescripts that are contrary to the law or beyond the law. or are according to the law.

(2) Rescripts of justice, which are those *e.g.* whereby the Pope in causes that devolve upon him nominates a delegated judge.

(3) Rescripts of graces, which bestow benefices or favours.

These are of two kinds :

(1) Containing a grace *facta*.

(2) Containing a grace *facienda* : that is, at the will of the executor.

4. Rescripts are subject to certain vices or defects :

(1) Defects of persons : that is, when the giver or the obtainer is incompetent.

(2) Defects of petition : that is, when it suffers from obreption (*q.v.*) or subreption (*q.v.*).

(3) Defects of form : that is, when some necessary formality is omitted or erased, or there is manifest error.

5. Rescripts of justice are vitiated by fraud or malice, except this be done through ignorance or simplicity, and even then if the Pope would not otherwise have granted the rescript. Those of grace are vitiated *de iure* by obreption or subreption.

6. Rescripts require execution, and those who are charged with this must ascertain that the petition be founded on truth ; and if they find the contrary it is incumbent upon them to inform the Holy See before execution.

7. Rescripts lapse or lose their force in the following causes :

(1) A rescript of *justice* lapses by the death of the Pope if the cause be still *res integra* ; but if proceedings have commenced and the cause be *res non integra* the rescript continues in force.

(2) A rescript of *grace*, if *facta*, does not lapse with the death of the Pope ; but, if *facienda*, it expires *si res sit adhuc integra*.

(3) A rescript may lapse by revocation or renunciation.

8. Rescripts of justice have, generally speaking, to be presented to the judge within a year. Hence in these the time of presentation has to be examined. In rescripts of grace there is no time fixed by law ; but notable negligence in procuring execution may cause a contrary rescript to be issued.

9. All rescripts, when the words are clear, are to be understood and interpreted according to their proper meaning and the common sense of the words. Those of justice, if doubtful, have to be interpreted according to common law ; and they receive a strict interpretation and are not to be extended to cases or persons not expressed. Rescripts of grace, which injure no one, are to be widely

interpreted ; but in matters of benefices the interpretation must be strict.

10. Rescripts that are against the *ius commune* and make no mention of the fact, or rescripts that are contrary to the *stylus curiae* (q.v.) are to be presumed false and null.

11. The form of the rescript carries the name of the Pope, the year of the Incarnation, the year of the pontificate, the day and place of issue.

12. Rescripts contain *clausulae* (q.v.) which extend, limit, or modify their force. These, therefore, have to be noted carefully before execution.

### RESERVED CASES

1. A reserved case is one which does not fall under the usual power of absolution given to a confessor, who therefore has no jurisdiction over the particular sin which is the object of the reservation.

2. The act of reservation, being a negation of jurisdiction, chiefly and directly affects only the person of the confessor by narrowing and limiting his power ; it only affects the penitent indirectly in so far as that he cannot be absolved by that particular confessor.

3. Hence penitents can be absolved in another diocese from sins that are reserved in their own diocese, provided that they have not gone away *in fraudem legis*.

4. The Council of Trent has decreed :

‘ And it hath seemed to our most holy Fathers to be of great importance to the discipline of Christian folk that certain more atrocious and heinous crimes should be absolved, not by all priests, but only by the chiefest priests, whence the Supreme Pontiffs, in virtue of the sovereign power delivered to them over the Universal Church, were deservedly able to reserve, for their own special judgments, certain more grievous cases of crimes. Neither is it to be doubted, seeing that all things that are from God are well ordained, but that this same may be lawfully done by all bishops, each in his own diocese, unto edification, however, not unto destruction, in virtue of the authority above (*that of*) other priests, delivered to them over their subjects, especially as regards those crimes to which the censure of excommunication is annexed.’

Sess. xiv.  
c. 7

5. Only the graver and more atrocious mortal sins that are

external and consummated are accustomed and ought to be reserved. Hence reservation is not to be used for venial sins or for mortal sins already confessed.

6. The power to reserve cases is vested in full in the Pope. He can reserve cases in all and every part of the Church. The bishop has the same power only in regard of his diocese. Regular prelates with quasi-episcopal jurisdiction can reserve certain cases in regard of their own subjects. But local superiors and parish priests cannot make reservations.

7. The canon penitentiary has, *ex officio*, no faculties for absolving from cases reserved to the bishop.

8. A penitent who is under the urgent necessity of celebrating or of communicating, and would otherwise cause scandal and become noted with infamy, can be absolved by an ordinary confessor directly from his unreserved sins, and indirectly from those under reservation even if they have hidden censures attached. But the penitent is obliged to submit the reserved sins to a confessor who has the faculty of absolving them.

9. A penitent in extreme necessity, in the article or peril of death, can be directly absolved from reserved sins without any obligation of submitting them again to a duly qualified confessor, unless they have censures attached.

## RESIDENCE

1. The law of residence in a church or prebend is nothing else than the obligation of dwelling in the place of the benefice (*q.v.*) and of personally serving in the divine offices of the Church. Hence residence is intended to insure service.

2. There are two kinds of residence :

(1) True residence.

(2) Feigned residence in the case of one who is lawfully absent.

3. By common law all benefices demand residence on the part of the incumbent ; but by a general custom of the whole Church simple benefices do not require personal residence. Hence a simple benefice can be served by others unless the founder has clearly and expressly made it a condition that the service should be personal.

4. Bishops and parish priests are bound to personal residence not only by ecclesiastical law, but also *de iure divino et naturali*.

5. The Council of Trent says :

‘Whereas it is by divine precept enjoined on all to whom

the cure of souls is committed to know their own sheep, to offer sacrifice for them, and by preaching of the Divine Word, by the administration of the sacraments, and by the example of all good works to feed them, to have a fatherly care of the poor and of other distressed persons, and to apply themselves to all other pastoral duties, all which (*offices*) cannot be rendered and fulfilled by those who neither watch over nor are with their own flock, but abandon it after the manner of hirelings, the sacred and holy Synod admonishes and exhorts such that, mindful of the divine precept and *made a pattern of the flock*, they feed and rule in judgment and truth.'

Sess.  
xxiii.  
c. 1, d. r.

6. The same Council speaks especially to bishops in these terms :

'In the meantime it admonishes and exhorts them in the Lord that unless their episcopal duties call them to some other part of their own diocese they on no account be absent from their own cathedral church during the period of the Advent of the Lord, and of Lent, on the days of the Nativity, of the Lord's Resurrection, of Pentecost and of Corpus Christi, on which days especially the sheep ought to be refreshed and to rejoice in the Lord at the presence of the Shepherd.'

*Ibid.*

7. Benedict XIV. Constit. *Ad Universae*, confirms and extends the Tridentine law.

8. Beneficiati without cure of souls, as canonries and such like, are bound to residence only by canon law.

9. Bishops can be excused from residence, for a just cause, for three months; canons also for the same time. Parish priests only for two months.

10. The other clergy, as they are not bound by common law to residence, are subject in this to the local law.

11. The First Provincial Council of Westminster decreed :

'Those who have the cure of souls should remember that they are bound to residence; and consequently no one should be absent from the place of his ministry without a reasonable cause; and he who wishes to leave home for a few days should obtain in writing permission from the bishop or the vicar general.'

xxv. 14

12. The Second Provincial Council also ordered :

'We determine that assistant priests ought to inform the head missionary of each church as often as they leave home, even for a day, and that no missionary, either principal or assistants, ought to be absent on a Sunday or a holiday of obligation without leave from the bishop or vicar general, except in case of urgency, in

x.

which case the priest leaving home ought, as soon as possible, to inform the bishop of the said urgency, and leave a suitable priest to supply his place.'

### RESIGNATION

1. Resignation is a spontaneous renunciation or dimission of an ecclesiastical benefice made before and accepted by a lawful superior.

2. There are two kinds of resignation :

(1) Tacit, *e.g.* by promotion or when anything is done which by law causes the benefice to be vacated, such as accepting a benefice which is incompatible with one already possessed ; or when a cleric in minor orders marries or is solemnly professed.

(2) Expressed : that is, done by some word or deed.

3. Expressed resignation is either absolute or conditional.

4. Conditional resignation can be made in five ways :

(1) Made in favour of a third person.

(2) Made with the reservation of a pension.

(3) Made with *ius regrediendi* under certain contingencies.

(4) Made *cum ingressu*.

*N.B.* These four can only be made by leave of the Pope.

(5) Made with exchange.

5. Any beneficed cleric can, regularly speaking, if he have a just cause, resign a benefice except that which is his title, unless he can prove that he has other and sufficient means.

6. A cleric's resignation, if he be ill, is null according to the 19th rule of the Chancery, if made within twenty days of his death.

7. A cleric holding a benefice subject to patronage (*q.v.*) cannot resign in favour of another or with the reservation of a pension without the leave of the patron ; nor can one who holds an elective benefice resign without the consent of those who have the right to elect. Such a resignation, however, is not *ipso facto* null, but it can be nullified at the instance of those concerned.

8. Resignation of a benefice, if made fraudulently during the course of litigation, is null.

9. Resignations of parishes made *in curia Romana* in favour of a third, especially with the reservation of a pension, are not admitted ; unless the time during which the benefice has been held is mentioned, and is five or at least three years.

10. The just causes recognised for resignation are :

(1) The utility of the Church.

(2) The salvation of the holder.

11. A bishop can resign his see for the following reasons :

*Debilis, ignarus, male conscius, irregularis,  
Quem mala plebs odit, dans scandala cedere possit.*

12. Clerics can resign for the following causes :

Age, health, crime, censure, unwillingness to serve the benefice, appointment to another benefice, promotion.

13. Pius V., Constit. *Quanta Ecclesia*, 1568, declared that resignation without a cause is null.

14. An absolute resignation accepted by a lawful superior admits of no repentance. But before acceptance it can be withdrawn.

15. One who has resigned a benefice can return to it on a new title.

16. Resignation of a benefice under lay patronage cannot be made to the patron ; but only into the hands, and by the authority and with the consent, of the lawful ecclesiastical authority.

17. Resignation by exchange must be to the benefit either of one of the churches or those exchanging. It must be done by public authority ; otherwise it is counted simoniacal. The Pope's authority is needed for the exchange of benefices reserved to him.

18. For the validity of such exchange of benefices publication is needed according to Gregory XIII., Constit. *Humano viz iudicio*, 1584.

19. The publication takes place during mass in the church or churches concerned and in the cathedral. The document is to be nailed *ad valvas*. It can be done by a procurator or by the resigner himself reading summarily the letters authorising the resignation.

20. Benedict XIV., Constit. *In sublimi*, forbade resignation of benefices made with a reservation of a pension and the secret agreement to extinguish this claim by a stipulated sum.

## RESOLUTIONS OF THE SACRED CONGREGATIONS

1. The resolutions of the sacred congregations are not binding :

(1) When they are obtained furtively and without seriously stating the facts of the case.

(2) When they are in terms different from the *Stylus Curiae*.

(3) When they are not published.

2. A later resolution prevails over an earlier one.

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3. When the cause vanishes so does the resolution.
4. The resolutions are said to constitute a *res iudicata*, and make law when they are not restricted to certain circumstances.
5. When they are approved of by the Pope they have the force of apostolic constitutions.
6. The resolutions of particular congregations supply the application to similar cases.

### RESTITUTION IN INTEGRUM

1. Restitution *in integrum* is, generally speaking, the same as replacing a cause in its *status quo ante*.

2. It is an extraordinary remedy of the law whereby one who is grievously wounded (as regards natural equity) by the office of the judge is reduced or restored to the *ius* he had before the grievance was inflicted.

3. There are four conditions required for a restitution *in integrum* :

(1) That the act from which the *gravamen* proceeds should be *de iure* valid.

(2) That the *gravamen* or *laesio* be grave and notable.

(3) That it should arise from the *dolus* of the adversary, or by the neglect of a procurator, or by the indiscreet good nature of the injured party.

(4) That it should be made for a just cause.

4. Restitution *in integrum* should be asked within four years from the judge of the one against whom it is set, and the period is to be counted from the day when the *gravamen* or *laesio* was known. One who is unjustly prevented is not bound by the time limit. After four years, restitution can still be granted if prevarication can be shown, and if great loss or inculpable ignorance be pleaded.

5. When restitution *in integrum* is asked, the execution of the sentence is ordinarily suspended unless there be a presumption of malice against the petition.

### RETREATS

1. The First Westminster Provincial Council decreed :

xxiv. 7

‘As the fervour of devotion easily grows cold and, as St. Leo observes, even pious souls become sullied with the dust of the world, all priests are bound, at least every two years, to go to the spiritual exercises which the bishop will provide.’

2. As regards retreats for the laity the same Council said :

‘ We specially desire that the priest provide for his flock a mission or spiritual exercises to be given by religious or by some of the clergy as often as the bishop shall judge it expedient. The result will be that those who have fallen asleep in sin will be awakened and arise, the tepid and weak will be animated and strengthened, the just and devout be inflamed to the more fervent study of piety.’ xxv. 11

## ROMAN CONGREGATIONS

1. The Roman congregations are commissions, composed chiefly of cardinals, to whom the Pope refers certain matters relating in a special manner to the Church.

2. There are two kinds of congregations : permanent and temporary. Only the permanent ones, the *congregationes ordinariae*, concern us here. They are chiefly the Holy Office or the Inquisition, the Index, Bishops and Regulars, the Council, Rites, and *Propaganda Fide*.

3. The congregational system was practically instituted by Sixtus V., who, by the constitution *Immensa aeterni Dei*, 22 January, 1587, created fifteen congregations of cardinals charged with the expedition of the affairs of the Church. He divided the various businesses and assigned them to each congregation, giving it jurisdiction and regulating its composition and procedure.

4. A congregation consists of a prefect, a certain number of cardinals, a secretary and sometimes a sub-secretary, consultors, and officials, and sometimes of attached prelates and qualificators.

5. The full session of a congregation is generally held once a month, and is presided over by the senior cardinal, not by the prefect. One of the cardinals appointed *Ponente* has previously thoroughly studied the question to be discussed, and draws up a formal report. A printed summary of each question with the arguments for and against has been already drawn up by an official called the *Sommista*; and this, together with the principal documents of the process, some days previously, have been distributed to the cardinals. The *vota*, or opinions of the consultors, are also sent to each cardinal, who, with the help of his auditor, studies the question, and if necessary asks for further information or for the whole *dossier*. At the meeting of the cardinals there is free, orderly discussion, and the decision is come to without secret voting. The congregation, being supreme, gives its decision in the



fewest words possible, and never gives any reasons that have conduced to the sentence. Should the official *résumé* of the meeting show that in an important matter the voting does not represent a moral unanimity, or that it was against the opinion of the *Ponente*, who presumably knows the case fully, the decision, if brought to the Pope for his confirmation, may be set aside for further consideration and examination.

6. In connection with the monthly meetings are the *Congressi*, which are held weekly in the apartments of the cardinal prefect who presides. A *Congresso* is composed of the prefect, the secretary, the sub-secretary, the *auditor*, and the officials; and it transacts either such business as is of smaller importance, or arranges the matters for the general meeting.

7. It may be that the decision of a congregation is questioned on a point of law, or because certain necessary arguments have not been considered. If this can be established, the Pope may be petitioned to grant the benefit called *apertio oris*: that is, to allow the cardinals to reconsider the matter concerning which their mouths have been closed by the pontifical assent to their former decision.

8. It will be now necessary to describe the chief congregations that are of practical interest in English-speaking countries.

### § 1. *The Holy Office*

9. The Holy Office of the Inquisition, *S.C.R.S.U.I.*, was established by Paul III. (1542), and its present form is due to Sixtus V.

10. It consists of the Pope himself as prefect, certain cardinals at the will of the Pontiff; a commissary of the Holy Office, always a Dominican, who presides at the trials as ordinary judge; an assessor of the Holy Office, who reports cases under consideration to the full congregation; consultors chosen by the Pope from the more learned canonists and theologians, secular and regular; the fiscal procurator, and the defendant's advocate. Two other Dominicans are *consultores nati*—viz. the general and the Master of the Sacred Palace, and one of the conventual Franciscans holds an analogous place. These have at their service seven *qualificatores*, who give their judgment as to the particular note of condemnation to be attached to condemned propositions (*q.v.*).

11. The powers of the Holy Office, as determined by Sixtus V., are: 'Of inquiring, citing, proceeding, sentencing, and defining in all causes concerning manifest heresy, schism, apostasy from the

faith, magic, soothsaying, and abuses of the sacraments,' and by other legislation, many other matters that concern the purity of faith and morals.

12. There are four kinds of meetings of the Holy Office, viz. :

(1) The first purely preparatory is held on Saturdays to decide what business should go to the consultors, and what directly to the cardinals. This meeting consists of the assessor, the commissary, the two Dominican *consultores nati*, the fiscal procurator, and a *sostituto* of the chancellery.

(2) The meeting of the consultors takes place on Mondays ; and these give their opinions on the subjects to be submitted to the cardinals.

(3) The meeting of the cardinals is held on Wednesdays (Feria IV.) ; and on the evening of that day the assessor reports to the Pope the decisions of the cardinals, and the result is pronounced in the name of the Pope.

(4) The fourth meeting, when the gravity of the affairs demands, is held in the presence of the Pope on Thursdays (Feria V.).

13. There are certain peculiarities about the Holy Office that need mentioning :

(1) The full number of cardinals in the congregation need not be present to give value to a decision. If two only are present there is a quorum.

(2) The secret of the Holy Office is of the most binding force. Violation of the secret induces excommunication *latae sententiae* reserved to the Pope ; and the theological fault is so great and its absolution is so strictly reserved, that no one else, even of the highest, except in the article of death, can grant absolution therefrom. Moreover, there are other very grave penalties which can be inflicted by the Holy See. The secret binds not only the members of the congregation, but also any person who is called to depose before it. The oath of secrecy is taken by the qualificators and officials before the commissary, by the consultors before the cardinals at the first congregation after their nomination, and by the cardinals themselves standing in their places.

(3) There are three steps in the process. A denunciation is made in due form to the local bishop, who makes what are called the *diligentiae* : that is, the local inquiry, from two priests who knew both the denouncer and the denounced, and after examining them under the seal of secrecy he sends the result to the Holy Office. Then the Holy Office, the most impartial of all human tribunals, contents itself with receiving the denunciation, which is marked with the

word *Observetur*. If a second denunciation, conducted in the same way, arrives, it is marked *Iterum observetur*. It is not until a third formal denunciation has been made by three different persons about the same facts that the Holy Office takes steps to try the case either by citing the accused to Rome or by instructing the bishop how to proceed in its name. In cases where there would be grave danger in delay the Holy Office can proceed upon one denunciation. The Inquisition appoints an official to defend the accused and to set forth all the attenuating circumstances : for this purpose he can make use of the memorials which the accused's advocate prepares. The accused is not now always obliged to swear that he will tell the truth. After all the means of coming to a true knowledge of the facts have been exhausted sentence is pronounced.

14. The Secretary's address is Palazzo del S. Uffizio, where all the meetings are held except the Thursday meetings, which are held in the Vatican Palace.

### § 2. *Index*

The Sacred Congregation of the Index (S.C.I.) was founded by S. Pius V. in 1571, and received its definite shape under Sixtus V. Its duty is to warn the faithful of dangerous books and to prohibit their perusal.

15. This congregation consists of a cardinal prefect and of other cardinals, the Master of the Sacred Palace as assistant with another Dominican as a secretary, consultors, and relators, who are charged with the examination of books submitted to them and report thereon to the cardinals.

16. Its procedure is as follows : Some public person, having jurisdiction in the Church such as a bishop or prelate, presents a book for examination. The secretary communicates with the ordinary of the place of printing, if the denunciation had not been made by him as part of his pastoral charge. The book or publication is then handed to a consultor, who is bound to secrecy both as to the name of the book and as to the fact that he has been called upon for his opinion. His report is printed and distributed to the cardinals and to the other consultors, who hold a meeting on Thursdays. The book itself and all documents concerning it are left at the offices of the congregation, so that all concerned can verify the quotations. The consultors give their votes ; and the report of their meeting together with the number of votes, but not the names of the voters, is printed and distributed to the cardinals. These

assemble on Mondays and deliberate two points concerning a book :

- (1) Is it to be condemned *in se* ?
- (2) Is it opportune to condemn it ?

Should the author be one who has done service to the Church and can yield, should the book have had little circulation and can easily be corrected, under such circumstances there may be a certain hesitancy in formally condemning a book. In such cases the Sacred Congregation may order the secretary or the ordinary to propose to the author such measures as may seem advisable. Sometimes the author is requested to withdraw his book from circulation. Sometimes, also, it happens that the cardinals are not satisfied with the report of the consultors, and they remit the case for another examination, and it passes through the close scrutiny of several consultors. As the point in question is whether the book under examination is, as it stands, worthy of condemnation, the question of the author does not come directly before the congregation. Only the purity of faith or morals of a book concerns this Sacred Congregation ; the question of the purity of faith or morals of the author does not come before it at all, but belongs to the Holy Office. But sometimes by way of condescension the congregation allows an author, who deserves particularly well, to make what defence he can on behalf of his book. A book is either condemned absolutely or *donec corrigatur* ; and in the decree if the author have submitted the clause is added, *Auctor laudabiliter se subiecit et opus reprobavit*. The decisions of the congregation are submitted to the Pope together with the grounds upon which they are based ; and he acts as he thinks well, either by confirming the decree or by remitting it for further consideration.

17. Leo XIII., Constit. *Officiorum ac munerum*, 1896, reformed what are called the Laws of the Index concerning the Prohibition and the Censorship of Books (*q.v.*). These laws are of universal force, but a decree S.C.P.F. gave to the English bishops most ample powers of dispensation, so that owing to the peculiar circumstances of the country they can ' modify the rigour of the law by their prudence and counsel according as the cases may require.'

18. The Laws of the Index are in ten chapters, and concern the books of apostates, heretics, schismatics, and of others who *ex professo* attack the Catholic faith ; editions of the Scriptures in the original or in translations in order to safeguard their use and prevent abuses ; obscene books *ex professo* ; certain blasphemous classes of books ; new forms of sacred images and books

of indulgences published without leave; liturgical books and private prayer-books; papers, &c., which are against religion or good morals; the licence needed to read forbidden books; and the necessity of denouncing bad books.

19. The offices of the Sacred Congregation of the Index are in the Palazzo della Cancelleria Apostolica.

### § 3. *Bishops and Regulars*

20. The Sacred Congregation of Bishops and Regulars (S.C.E.R.) was founded by Sixtus V. It takes cognisance of all affairs concerning bishops and also regulars. It adjudicates their mutual relations and faults against canon law. It is the high court of appeal against the decisions of bishops and metropolitans. It is the first of the Roman congregations, and well deserves the name of *occupatissima*.

21. The congregation consists of a cardinal prefect, fifteen to twenty other cardinals, a secretary, who is almost always a bishop, an under-secretary, a body of consultors and officials. Its day of meeting is Friday.

22. The offices of this congregation are in the Palazzo della Cancelleria Apostolica.

### § 4. *The Council*

23. The Sacred Congregation of the Council (S.C.C.) was instituted by Paul IV. in 1563 to be a permanent board of interpreters of the decrees of the Council of Trent. Sixtus V. gave it the present form and enlarged its scope, confiding to it the examination of provincial councils and the reports of the visits *ad limina*, and to decide disputes and matrimonial questions. It is also the high court of appeal on points of law.

24. The congregation consists of a cardinal prefect, of twenty to thirty other cardinals, of an episcopal secretary, under-secretary, an auditor, and a council of prelates. In this congregation the place of consultors is partially taken by the *Studio*, where young ecclesiastics, who have taken their doctorates in canon law, have, during four years, practical training as advocates.

25. The offices of this congregation are in the Palazzo della Cancelleria Apostolica, and its day of meeting is Saturday.

§ 5. *Rites* —

26. The Sacred Congregation of Rites (S.C.R.) was instituted by Sixtus V. to take charge of all questions that concern divine worship and the canonisation of saints.

27. This congregation consists of a cardinal prefect, a cardinal sub-prefect, some thirty other cardinals, a secretary, under-secretary, official prelates, and consultors. It has also in connection several commissions for special purposes.

28. Its offices are also in the Palazzo della Cancelleria Apostolica. Its day of meeting is Tuesday.

§ 6. *Propaganda*

29. With the exception of the Holy Office and the Index, the only one of the ordinary congregations that English-speaking countries have directly to deal with is that of the Sacred Congregation for the Propagation of the Faith (S.C.P.F.). This congregation was founded by Gregory XV. in 1622; and this Pope ordered that all its work should be done gratuitously either by itself or, if necessary, by the other congregations at its request.

30. This most eminent congregation, which has to do with nearly three hundred English-speaking bishops, and rules the hierarchies of England, Ireland, Scotland, the United States of America, Canada, Australia, British India, and Holland, besides numerous vicariates and prefectures, consists of a cardinal prefect and some twenty-four other cardinals, a secretary, a body of consultors, and another of officials. To this congregation is attached a commission for examining new institutes; another for examining the reports presented by the bishops in their diocese; also a commission for revising provincial synods. There are separate departments for Oriental affairs and for the administration of the property of the congregation.

31. The congregation holds its sessions generally on the first Monday in each month; and at this bishops are nominated for presentation to the Pope, new dioceses are made, and others are divided. On the third Monday a special congregation meets for Eastern affairs. A *congresso*, at which the cardinal-prefect presides, with the secretary and the *minutanti*, is held every Tuesday; and at this meeting the cases of lesser importance are disposed of or considered, *e.g.* appeals &c.

32. The power of the S.C.P.F. is legislative, judicial, and gubernative; but in all grave matters direct reference is made to the Pope, and nothing of weighty import is settled without his direct consent.

33. The procedure of this congregation is summary: that is, while securing all the essentials of justice, the formalities are dispensed with in favour of the applicant. The Holy See is based on justice and truth, and in the administration of justice it has no respect for persons. The lowest person will receive as much substantial justice as the highest. As the congregation depends for its action upon written documents, if these be faulty the congregation is not to be blamed, but those who drew up the documents. Facts and principles are wanted, nothing else. Extraneous matter only complicates the issue, misleads, or at least causes delays which are vexatious to the petitioner who may only blame himself. As advocates are not allowed to plead before the congregation they are not necessary, except to put the case in due form and to instruct a petitioner as to the procedure. Patience, care, and desire to do justice are special characteristics of this congregation, as all know who have had any dealings with it. In order to possess every information the Sacred Congregation welcomes all duly authenticated information, and is ready to receive such from anyone who is willing to speak in his own person or as the duly accredited procurator of others. Hence any and everyone may communicate with the cardinal-prefect or with the secretary.

34. The meetings of *Propaganda* are held in the Palazzo di Propaganda, Piazza di Spagna, where the secretary has his office.

35. The replies of the Roman Congregations, being decisions of the supreme judicial power, do not give the motives which have directed the conclusion, but only a few words which succinctly contain the sentence decreed.

36. The following are among the more common replies:

(1) *Et amplius*. This means that, the matter having been fully examined and the decision being unanimous, the cause will not be heard again.

(2) *Et non conceditur*. This means practically the same as the above.

(3) *Non expedire*. This is a mild form of refusal.

(4) *Nihil*. The petition was not admitted, being entirely incongruous.

(5) *Relatum* and *Lectum*. These imply that the case was read but not admitted.

(6) *Non proposita*. This clause means that the Sacred Congregation prefers not to make a specific reply.

(7) *Reponatur*. Here there is no immediate reply vouchsafed, but the petition is to be placed in the archives, possibly to be dealt with at another season.

(8) *In decisis* or *A decreto*. This means that, the petition having been once presented and refused, the matter is to be taken as decided and will not be reopened.

(9) *Gaudeat impetratis*. By this clause the petitioner is told to be content with what he has already obtained.

(10) *Spectare ad episcopum*. This tells the petitioner to apply to his bishop, who will observe the canonical requirements in the case.

(11) *Ad mentem*. This is capable of two meanings :

(a) The Sacred Congregation explains by private information the meaning of the decree sent to a person whose authority is thereby saved from a public rebuke.

(b) The Sacred Congregation adds an explanation to the decision itself in cases where a sentence, which should be given according to strict law, is modified in this special case because of certain equities.

(12) *Dilata*. This claim means that the Sacred Congregation has delayed to another meeting the petition, either for want of time or for further information. Sometimes certain phrases are used with the term *Dilata*, e.g. *Post aquas*: that is, the decision is delayed until the meeting after the autumnal rains, i.e. until after the summer vacation; *Post reges*, until after the Epiphany; *Post cineres*, until after the Carnival; *Post agnos*, until after the Easter holidays.

## ROMAN TRIBUNALS

1. The Roman tribunals that have to be mentioned briefly are the Chancery, the Datary, the Secretariate of Breves, the Vicariate, and the Penitentiary.

### § 1. *The Chancery*

2. The Chancery Apostolic is the oldest expediting tribunal of the Holy See, and is charged with issuing pontifical letters in the shape of Bulls (*q.v.*). The Chancery is, as it were, the secretariate of the consistory, and has to draw up and publish in legal



form what was arranged thereat. The tribunal is always presided over by a cardinal, who has the title of Vice-Chancellor, and generally signs the bulls, the Pope himself rarely signing bulls. The Vice-Chancellor is assisted by a regent and a body of officials. Attached to the Chancery is the College of Protonotaries, *participanti*, whose signatures are necessary for the collation of the greater benefices.

3. The procedure of the Chancery is governed by certain Chancery rules (*q.v.*)—seventy-two in number—drawn up by Clement XII. in 1730 and confirmed by each Pope on his accession.

4. The Apostolic Chancery is in the Palazzo della Cancelleria Apostolica.

### § 2. *The Datary*

5. The Datary is the tribunal through which the Pope grants favours, such as appointments to benefices reserved by the Holy See, pensions, dispensations in public matrimonial impediments, coadjutorships, dispensations from irregularity, &c.

6. This tribunal does not itself expedite the letters, but sends them either to the Chancery or to the Secretariate of Breves.

7. The tribunal is presided over by a cardinal with the title of Pro-Datary, who is assisted by an under-datary. Appointments to benefices are carried through with a large staff of clerical and lay assistants.

8. The offices of the Datary are in the Palazzo della Dataria.

### § 3. *The Secretariate of Breves*

9. The Secretariate of Breves (*q.v.*) is for the expediting of such papal letters as do not require the formalities of bulls. Hence this tribunal is much used by all the congregations for dispensing many of the powers accorded to them.

10. A Cardinal Secretary of Breves with a *sostituto* presides over this department, which includes both clerical and lay assistants.

11. Many favours can be asked for directly from the secretary of Breves, who has certain powers granted to him for this purpose. Petitions for prelaties &c. go through this office.

12. The Secretariate of Breves is in the Palazzo della Cancelleria.

### § 4. *The Vicariate*

13. The functions of the Pope as Bishop of the Church Catholic necessitate a formal organisation for assistance in his functions

as Bishop of Rome. Hence his ordinary power is committed to a cardinal with the title of Cardinal-Vicar. He is the ordinary of Rome and acts in most ways as an ordinary diocesan bishop. He is the ordinary judge of the Roman *Curia* and district.

14. From the cardinal-vicar come all faculties and dispensations sought for use in Rome itself, and he has the local clergy under his immediate jurisdiction. Celebrets have to be *visés* at his office.

15. The vicariate is established at No. 7 Piazza S. Agostino.

### § 5. *The Penitentiary Apostolic*

16. As the Datary is for granting favours for the external *forum*, so the Penitentiary Apostolic is for granting favours which are of force for the internal *forum*. It has also, by law, the power of granting dispensations which are of avail in the external *forum* in cases where the petitioner is too poor to pay the ordinary chancery fees of the Datary.

17. This tribunal dispenses with all occult irregularities, revalidates marriages that have occult impediments, absolves from censures reserved to the Pope or to lower prelates, commutes and dispenses from vows.

18. A cardinal priest presides over this internal tribunal and has the title of Grand Penitentiary, or *Penitenziere Maggiore*. He has jurisdiction over every dignity or pre-eminence. He is assisted by a regent and a theologian, always a Jesuit, and a canonist whose duty it is to examine and report upon the petitions that come from all parts of the world.

19. The Penitentiary Apostolic, having directly to do with the salvation of souls, makes no charge whatever for its letters. It receives applications both from penitents and from confessors all over the world, and letters may be written in any language.

20. All the officials, without exception, are bound to the strictest secrecy.

21. The replies are not sent directly to the petitioner, but for safety's sake and to preserve secrecy in delicate matters every care is taken that they shall arrive at their destination by the surest way.

22. If the case submitted be occult, the name of the person concerned is not mentioned in the petition, only an initial or the conventional names of *Titus* and *Anna* or the like. But it is necessary to mark at the bottom the name, quality, and address of the petitioner or the person to whom the answer is to be sent.

23. If it be a layman who writes for powers for his confessor to absolve he should add *dignetur Eminentia vestra rescribere ad . . .* giving the name and address of the confessor.

24. It is quite lawful to write to the Penitentiary Apostolic even when the powers asked could be granted by the bishop of the diocese; for it may sometimes happen that the secrecy of confession might be violated by such an application, as the bishop could know, by the nature of the request, the name of the person concerned. It is well, therefore, in such cases to mention the fact to the Penitentiary Apostolic, so that the reply may not be sent through the bishop.

25. It is absolutely forbidden for anyone, save the person addressed, to dare to open a rescript of the Penitentiary. Even the bishop of the diocese comes under this prohibition. So stringent is the law against any unauthorised person venturing to open a rescript from the Penitentiary that the moment the wrapper is undone unlawfully, the rescript ceases to be of any value at all, and the absolution granted by it is withdrawn. The faithful have every security for the most perfect liberty of communication with the Holy See on matters of conscience. To provide against difficulties which might arise by the absence or death of the confessor, the rescript is generally addressed to the petitioner *aut alii confessori ab oratore eligendo*. If this clause be not added, and the person addressed not reachable, application must be made anew to Rome.

26. The offices of the *Penitenziere Maggiore* are in the Palazzo della Cancelleria Apostolica.

## RURAL DEAN

1. Rural deans, or vicars foran, are officials appointed by the bishop to preside over certain districts of the country parts of the diocese.

2. Their jurisdiction is not ordinary, but delegated, and depends upon the will of the bishop.

3. As rural deans have a tribunal different from that of the bishop and vicar-general, the appeal from their sentence lies to the bishop and not to the metropolitan.

4. They are not constituted in dignity, and they enjoy no precedence except where custom allows.

5. The principal duties are :

- (1) To investigate any clerical crimes.
- (2) To inform the bishop of them.

- (3) To watch over the execution of synodal and episcopal decrees.
- (4) To warn the bishop of what is ill done in the diocese.
- 6. The office can be taken away for a just cause.
- 7. The First Westminster Council decrees :

xiv. 2, 3

‘The bishop may also appoint vicars foran, or, as they used to be called in England, and now are commonly called, rural deans, with a written delegation of those faculties which he judges to be expedient to be used in a certain district. It will be the duty of the rural dean to preside at meetings or conferences upon cases of conscience and liturgy throughout the district assigned to them, to attend to priests who are sick, to look after the administration of Church property, to see to sacred edifices being kept in repair, and to lay before the bishop or vicar general such matters as need attention.’

8. The First Maynooth Synod orders vicars foran, at least 181  
once a year, or oftener if necessary, to send to the bishop a relation of the state of religion and the behaviour of the clergy of his deanery.

## SACRILEGE

1. Sacrilege is a violation of a sacred thing either in itself or in things connected with it. There are three kinds of sacrilege, viz. personal, real, and local.

2. Personal, which is committed by all unlawful and violent laying of hands upon a sacred person either in anger or in lust.

3. Real, which is committed by violating or injuriously treating or evilly administering the sacraments of the Church or the sacred utensils &c.; by seizing Church property; suppressing pious legacies; defrauding the Church of its rights; vilifying the sacred Scriptures &c.

4. Local, which is committed by anything done against the sanctity of a place dedicated to God. This can be by malicious destruction of an altar or a church; by the slaying of a man within the consecrated precincts; by the injurious shedding of human blood or the unlawful and notorious *effusio seminis*; by the notorious burial of excommunicated persons or of the unbaptized; by all acts against the immunity of sacred places; by theft, which can be in three ways, i.e. the theft of a sacred thing from a sacred place, or of a non-sacred thing from a sacred place, or of a sacred thing from a non-sacred place.

5. Certain specified cases of sacrilege of all these kinds find a

Pius IX.  
Constit.  
*Apostolice  
Sedis*, 1869

punishment in the excommunication *latae sententiae* specially reserved to the Roman Pontiff.

### SCHISM

1. Schism is a tearing away, and takes place when anyone voluntarily separates himself from the unity of the Church Catholic. It is difficult for schism to exist without heresy (*q.v.*), for schismatics can easily persuade themselves that salvation may be found in a wilful and culpable disunion from the Church—an opinion which is heretical.

2. Schismatics are chiefly those who separate themselves from the Roman Church ; in a less strict sense those who separate themselves from their bishops who are in communion with the Apostolic See.

3. Schism is divided into :

(1) Pure, *i.e.* free from heresy ; and non-pure, *i.e.* joined with heresy.

(2) Special, *i.e.* an unjust withdrawal from one's own bishop who is in union with the Holy See ; universal, *i.e.* a denial of obedience and subjection to the Holy See.

4. The penalties for pure schism are :

(1) Excommunication, reserved, in a special manner, to the Holy See.

(2) Inhability to benefices and ecclesiastical dignities ; and this most probably even after doing penance.

(3) Privation of ecclesiastical jurisdiction.

(4) Privation of offices, honours, and dignities.

5. Those who receive orders from schismatics are *ipso iure* suspended, and are inhabile for ecclesiastical offices until they are reconciled to the Church.

6. The penalties for non-pure schism are the same as for heresy.

Pius IX.  
Constit.  
*Apostolice  
Sedis*, 3

### SCHOLA CANTORUM

In the *Motu proprio* of 22 November, 1903, Pius X. ordered :

1. ' In seminaries of clerics and in ecclesiastical institutions let the above-mentioned traditional Gregorian chant be cultivated by all with diligence and love, according to the Tridentine prescriptions, and let superiors be liberal of encouragement and praise towards their young subjects. In like manner let a *Schola*

*Cantorum* be established, whenever possible, among the clerics for the performance of sacred polyphony and of good liturgical music.

2. 'In the ordinary lesson of liturgy, morals, canon law, given to students of theology, let care be taken to touch on those points which regard more directly the principles and laws of sacred music, and let an attempt be made to complete the teaching with some particular instruction on the æsthetic side of the sacred art, so that clerics may not leave the seminary ignorant of all those notions which are necessary for complete ecclesiastical culture.

3. 'Let care be taken to restore, at least in the principal churches, the ancient *Scholæ Cantorum*, as has been done with excellent fruit in a great many places. It is not difficult for a zealous clergy to institute such *Scholæ* even in the minor and country churches—nay, in them they will find a very easy means of gathering around them both the children and the adults, to their own profit and the edification of the people.

4. 'Let every effort be made to support and promote in the best ways possible the higher schools of sacred music, where these already exist, and to help founding them where they do not. It is of the utmost importance that the Church herself provide for the instruction of her choirmasters, organists, and singers according to the true principles of sacred art.'

### SEATS IN CHURCH

1. The practice of letting out seats in church is a recognised method of providing for the support of the church where there is no fixed income.

2. The Second Council of Westminster, 'till the charity of the faithful shall provide a better way,' does not disapprove of the 'letting of seats or places in the church to certain persons or families at a fixed rent to be paid to the church'; or of a custom prevailing generally in England, a 'payment of a fixed sum, according to the part of the church which they occupy, by those who do not rent seats, yet are not content to occupy what is called the free space.'

3. But to protect the rights of the poor in God's house the Council decrees that the free space must not be diminished nor narrowed without consulting the bishop.

4. As to the expediency of this way of providing for the necessities of the church the fathers of the above Council, while saying

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that it is certainly much to be desired that this method of maintaining the church were done away with, yet hold that experience has taught that as yet (in 1855) it is impossible to dispense altogether with it. Wherefore it was decreed that where the custom of paying for seats existed it was to be kept and no innovations introduced without the authority of the bishop.

viii. 10,  
11

5. The money coming from the rent or payment for the seats belongs to the general wants of the mission.

6. The Fourth Council further declares :

xiv. 2

‘ In all churches which are served whether by seculars or by regular missionaries, the seat rents should be approved by the bishop; and in all other public churches it should be conformable with the statutes of the diocese. Moreover it is for the bishop to judge how much space is to be left free for the use of the poor.

## SECOND MARRIAGE

1. The Holy Office issued 12 June, 1882, an Instruction as to the kind of proof requisite before a second marriage be contracted. The Apostolic See, in so grave a matter which affects the validity of a sacrament, rests solely for its determination upon ecclesiastical law, according to which death must not be presumed merely by reason of the lapse of years, but must be proved to have occurred.

2. First of all an authentic document as to the death itself should, if possible, be had. ‘ If, however, testimony of this description cannot be had the Sacred Congregation does not mean to put out of the question other kinds of proof which by common law may be accepted provided they be sound and ample.’

3. These other proofs are to be sought especially from the account of trustworthy witnesses, *e.g.* relatives rather than strangers, fellow citizens than others; ‘ but neither wanderers nor soldiers, unless for special reasons and upon mature reflection, should be allowed.’ The person who gives witness should be identified by some person known to the notary.

4. The Sacred Congregation rejects ‘ no evidence which tends to enable them to see whether a number of concurrent testimonies which apart could not beget certainty might not do so when all are taken together.’ Hence presumptions and conjectures by means of which the evidence of witnesses is strengthened are admissible, and account must be taken of public talk and rumour.

5. Certain authentic facts, too, which presuppose the death are allowed their weight, *e.g.* the evidence of well-informed and

trustworthy persons, now dead or absent, may have been heard at a time which puts it beyond the reach of suspicion by others who now witness as to what they have heard.

6. The Holy Office, after hearing all the evidence and consulting with experts in theology and canon law, gives final judgment as to the sufficiency of the proof of death, and as to there being no obstacle to the petitioner who wishes to contract a second marriage.

### SECRET SOCIETIES

1. Secret societies have been condemned by many Popes. The main grounds for the condemnation have been the oath of secrecy; the blind obedience due to the leaders; and the naturalism which is set forth instead of the Christian revelation confided to the Church. Another cause has been the war against Religion as well as against the State which has marked so many of these societies, and the substitution of Masonic benevolence for the Christian virtue of charity.

2. Clement XII. by the Constitution *In eminenti*, 28 April, 1738, condemned the Freemasons by name; and in order to do away with the false idea that the censure of excommunication was removed at the death of that Pope, Benedict XIV. by the Bull *Providas*, 18 March, 1751, renewed it. Pius VII. by the Bull *Ecclesiam a Iesu Christo*, 13 Sept. 1821, extended the condemnation to the *Carbonari*, a similar body of Italian origin; Pius VIII. by his Encyclical *Traditi* of 20 March, 1820; Leo XII. by apostolic letters, *Quo gravissima*, 13 March, 1826; Gregory XVI. by an Encyclical *Mirari vos*, 15 August, 1832; and Pius IX. by one, *Qui pluribus*, 9 Nov. 1846, repeated the condemnation. This Pope also, by the Constitution *Apostolicae Sedis* of 1869, renews the excommunication *latae sententiae* reserved to the Roman Pontiff against all who become Freemasons, *Carbonari*, or sectaries of that kind; also against those who favour them and do not denounce their leaders.

3. Leo XIII., by the Encyclical *Humanum genus*, 20 April, 1884, renewed all that his predecessors had done in respect to Secret Societies.

4. Finally, on 10 May, 1884, the Holy Office sent out an Instruction in which was suspended for one year the obligation of denunciation. The clergy were stirred up to instruct their flocks on the pernicious effects of secret societies, and to use all means, temporal and spiritual, to protect them from evil example.

5. The condemnation of secret societies is absolute, and no exception is made for any country. If in some countries it may



be said that Freemasons are only a beneficent body it still remains that they are in communion with and recognise as brethren other Freemasons whose warfare against religion is undisguised.

### SEDE VACANTE

1. By the term *sede vacante* is meant the vacation of a see in such a way that the title thereto is lost, *e.g.* by death, by resignation (*q.v.*), by translation (*q.v.*), or by deposition, or by notorious heresy on the part of the bishop.

S.C.E.R.  
24 May,  
1654

2. The see becomes vacant from the moment of the certain knowledge of the bishop's death or from the day of his actual translation, or the day when his resignation has been accepted.

Pius IX.  
Constit.  
*Romannus*  
*Pontifex*,  
28 Aug.  
1873  
*Ibid.*  
Constit.  
*Apostolicarum*  
*sententiarum*  
*reservatarum*

3. The see remains vacant until the apostolic letters of the new prelate's promotion are expedited and presented to the chapter, and before this presentation neither can the bishop attempt to administer the diocese, under penalty of excommunication *latae sententiae* specially reserved to the Pope, nor can the chapter acknowledge his jurisdiction, under pain of suspension *latae sententiae* reserved to the Pope.

4. During the vacancy of the Apostolic See there are no alternatives (*q.v.*) reserved by the Pope, so bishops can fill up all benefices pertaining to free collation during these months. The rules of the Roman Chancery expire with the Pope who confirms them.

S. Pius V.  
Constit.  
*Sanctissimus*  
*in Christo*

5. Benefices, with or without cure of souls, that fall in while an episcopal, archiepiscopal or primatial see is vacant, and are in the free and absolute gift of the holders of the see, belong to the Pope. But if the benefice be in the alternative gift of the bishop and the chapter, the latter has the right of presentation *sede vacante*, whether it be its turn or not.

6. *Sede vacante*, nothing is to be innovated that may be to the prejudice of the new prelate.

### SEMINARY

1. The institution of seminaries in their present form was the great work of the Council of Trent, which took up the idea of Cardinal Pole. The fathers of the Third Provincial Council of Westminster say :

'We cannot help rejoicing that the grace or honour, as we might well call it, was given by our Lord to our own country to be the first to suggest to the Church both the name and institution of

a seminary. For the most eminent and illustrious Cardinal Reginald Pole when making his visitations<sup>1</sup> by apostolic authority, in the year 1556, of the plundered Church in England, amongst the many remarkable decrees for the reformation of the realm which he drew up and issued, laid down this as the chief means of such reformation, viz. that every cathedral church should have a school attached to it in which "should be instituted a nursery and, as it were, a seminary of ministers." And this most able man goes on to describe and declare the whole subject so beautifully that he would seem to have provided the sacred Council of Trent, not only with the idea, but also the very words. For all the wise provisions made in the Council of Trent in reference to the selection and admission of youths, the course of study, the providing for the support of the seminary from benefices and other ecclesiastical resources, appear to be copied almost word for word from Pole's decree. And no greater praise could have been paid to anyone than xiii. this.

2. The Council of Trent made the following decree :

(1) ' . . . This holy synod ordains that all cathedral, metropolitan, and other churches greater than these should be bound, each according to its means and the extent of the diocese, to maintain, to educate religiously, and to train in a college to be chosen by the bishop for that purpose near the said churches, or in some suitable place, a certain number of youths of their city and diocese—or, if that number cannot be met with there, of that province—in ecclesiastical discipline.

(2) 'In this college should be received such as are at least twelve years of age, born in lawful wedlock and who know how to read and write competently and have a character and inclination that afford a hope that they will always serve in the ecclesiastical ministry. And the synod wishes that the children of the poor be principally selected, though it does not, however, exclude those of the more wealthy classes provided that they be maintained at their own expense and manifest a desire of serving God and the Church.

(3) 'The bishop, having divided these youths into as many classes as he shall think fit, according to their numbers, age, and progress in ecclesiastical discipline, shall, when it seems expedient to him, assign some of them to the ministry of the churches; the others he shall keep in the college to be instructed, and he shall supply the places of those who have been withdrawn by others,

<sup>1</sup> The decree on seminaries is Number 11 of the Legatine Constitutions of 1555.

so that this college may be a perpetual seminary of ministers of God.

(4) 'And that the youths may be the more advantageously trained in the aforesaid ecclesiastical discipline, at once they shall always wear the tonsure and ecclesiastical dress; they shall learn grammar, singing, ecclesiastical computation, and the other liberal arts. They shall be instructed in Sacred Scripture, ecclesiastical works, the homilies of the saints, the manner of administering the sacraments, especially those things that shall seem adapted to enable them to hear confessions; also the forms of the rites and ceremonies.

(5) 'The bishop shall take care that they are present every day at the Sacrifice of the Mass and that they confess their sins at least once a month, and receive the Body of our Lord Jesus Christ, as the judgment of their confessor shall direct. On festival days they shall serve in the cathedral and other churches of the place.

(6) 'All which and other things advantageous and needful for this object all bishops shall ordain as the Holy Ghost shall suggest, with the advice of two of the senior and most experienced canons chosen by themselves; and shall make it their care, by frequent visitation, that the same be always observed. . . .

(7) 'But if the prelates of cathedrals and of the other greater churches should be negligent in erecting the said seminary, and in preserving the same, and refuse to pay their share, it will be the duty of the archbishop to rebuke the bishop sharply and compel him to comply with all the matters aforesaid; and (*it will be the duty*) of the provincial synod to reprove and compel in like manner the archbishop, and to provide sedulously that this holy and pious work be as soon as possible proceeded with wherever it can be done.

Sess.  
xxiii.  
c. 18,  
d. 7.

(8) 'But if the churches in any province labour under so great a poverty that a college cannot be established in certain (*dioceses*) thereof the provincial synod or the metropolitan, aided by the two senior suffragans, shall take care to establish, out of the revenues of two or more churches in which singly a college cannot conveniently be established, one or more colleges as shall be judged expedient in the metropolitan or in some other more convenient church of the province, and there shall the youths of those churches be educated.'

3. On this decree the fathers of the Third Provincial Council of Westminster remark:

*Dec. cit.* 'But far beyond any praise in our power to bestow, beyond

every encomium of man, is that truly golden, truly apostolic decree in which the Sacred Synod of Trent commanded that everywhere should seminaries be founded and kept up. It is indeed a decree which is to be revered by all ; by reason of the wisdom and importance of the sense and words, no lapse of time can make it obsolete, no change of circumstances or variety of place can make it impracticable or void. For it lives by the vigour imparted to it by the unfailing Church of God, proceeding from whose fruitful womb it grew, unaided by the course of years or by human industry, so as everywhere to produce straightway the richest of fruits.'

4. From the above decrees it is abundantly clear that the seminary ordered, approved of, and recognised by the Church is the Tridentine seminary, which may be defined as :

'A diocesan college, ruled by the bishop with the advice of the canonical commissions, for the instruction in ecclesiastical discipline of the future ministers of the Church.' Hence it will be seen that the seminary in no way has the functions of a university. Its main object is ecclesiastical discipline : that is, formation in virtue and ecclesiastical knowledge. The authority for erecting a seminary is the Council of Trent and the decrees of the Holy See.

5. The obligation for each bishop to have his own seminary is formal, and negligent prelates can be compelled to obey the law. It is only in the case of great poverty that one or more colleges can be opened as seminaries with the authority of the provincial synod or of the archbishop aided by his two senior suffragans. It is not within the competency of the diocesan bishop to determine for himself the question whether the poverty of the diocese prevents him from having his own seminary ; the question must be decided by the provincial synod or by the metropolitan and his two senior bishops. Hence the idea of a central seminary, unless in exceptional cases, is un-Tridentine.

6. The seminary is in the closest union with the bishop who is the real ruler thereof. But, as the work concerns the whole diocese, the Council of Trent, while giving the bishop full power, still limits his exercise by insisting that on certain occasions he is obliged, for the very validity of his acts, to receive the advice of the canonical commissions for the seminary (*q.v.*). Hence, unless a lawful custom (*q.v.*) exists to the contrary, he is bound to institute these commissions and to use them according to the law of the Church.

7. In the building and support of the seminary the Council of Trent allows the bishop to use the revenues already set aside in certain places for the instruction and keep of youths. Also with the advice of his temporal commission for the seminary (*q.v.*) he can take a part of the episcopal *mensa* (*q.v.*), of the capitular funds and of all benefices for the foundation and support of the seminary, to which he can also, for a true necessity, join simple benefices, but not those with rights of patronage. Monasteries except of mendicants are also bound to contribute to the seminary, and even mendicants if they have benefices annexed to their houses. This shows how necessary the Council held the erection of seminaries to be. These measures are allowed; but if the seminary can be founded and supported by other means this extraordinary way of obtaining the necessary money has no place.

8. As regards the revenues of the seminary—the Council speaks absolutely, and does not limit the term by any means of raising these revenues—where the commissions are in use, a public account of them is to be given every year to the bishop in the presence of two deputies of the chapter and of other two chosen from the clergy of the city.

S.O.E.R.  
8 March,  
1788

9. If necessary the bishop can impose a tax upon all benefices, and this has to be paid three times a year in advance. The chapter does not pay this from their distributions (*q.v.*) if separated from their prebends (*q.v.*), for they are *casualia*, not benefices. Hence also the tax cannot be imposed upon the mass stipends. Benefices which are so small that they are exempted from the papal tenth when this is levied are also exempted from the seminary tax.

10. The amount of the tax is to be determined by the bishop with the consent of the two deputies of the chapter and as many of the clergy. It can only be taken from the superfluities of the benefice; for regard has to be made to the necessary expenses to be borne by the *beneficiato*. Two and a half per cent. up to four in some places is a recognised amount; and, regularly speaking, the tax should not exceed one half of the tenth. The bishop can enforce payment by means of censure. But if the seminary be endowed in part, or in whole, or have other sources of income, then so far as the Tridentine legislature is concerned, the tax is to be remitted.

11. The custom of giving over the seminary to the care of religious may be necessary in extreme cases; but as it may cut at the very root of the intimate connection between the

bishop and the diocese of all that concerns the seminary it is only tolerated.

12. The Councils of Westminster have been eloquent upon the subject of seminaries, and have drawn up admirable decrees as to the spirit of the training and the means to be observed in attaining the end. As, however, many of the decrees regarded a time that is past in England, the following decrees will be sufficient as to the obligations of a Tridentine seminary in England :

(1) ' We hold that it would exceedingly avail to the increase of Religion if seminaries were established in which the clergy could be educated apart from others. I. West. xxvi.

(2) ' Every one of the bishops proposes to apply himself carefully and earnestly at once to the task of forming a seminary in his diocese in the best way he can. For as his is that spouse to whom God Himself has bound him as by the tie of conjugal love, and as there is no more precious crown he can wear than the ecclesiastical virtues shining around him, no girdle with which he may be girded more beauteous than a band of pious clerics surrounding him, so no more pleasing or more welcome gift can each offer his spouse than a holy family of this kind which gives present joy now and future hope. May God, the Giver of all graces, the Implanter of good counsel, bless this determination, and thus make more than one of the Churches wedded to us, hitherto barren, dwell in a house the joyful mother of children. So be it ! So be it ! III. West. xiii.

(3) ' We commend, therefore, to the care and zeal of superiors the foundations of chairs with a suitable endowment. But it is desirable that no cleric should spend less than four entire years in the study of theology, and that each should go through the whole of the course without any interruption. . . . It were perhaps to be wished that the number of theological chairs should be increased and filled by learned men, and all by doctors. For then not only would the knowledge of sacred things be fuller and deeper, but very useful additions could be made to the branches now taught. xiv. Pars II. 2, 3.

(4) ' Since, now that the ecclesiastical hierarchy has been happily restored in England, the administration of the dioceses must be carried on according to the rules of law ; and since important questions arise for discussion both in provincial and diocesan synods, the solution of which depends upon canon law, and is assigned to the deliberation and counsel of priests, the necessity of setting to work at the study of canon law increases every day. All should go through the institutions at least of canon law . . . and thus ground themselves upon sound principles. Ibid. 6

*Ibid.* 7

(5) 'We particularly recommend the use of Latin in the study and teaching of theology, especially in maintaining scholastic disputes and public theses. For practice therein is for all ecclesiastics of the highest importance, particularly if they be promoted to any dignity or office, so that they may draw up documents properly and write letters, even with elegance, in the Latin tongue. . . . An end must, therefore, we think, be made of this neglect of the language of the Catholic Church. . . . Examinations in theology should, as far as possible, be held in Latin.

*Ibid.* 8

(6) 'It would doubtless be of very great service to those who are to become priests, as well as to the flocks to be entrusted to them, if at least a short course of what is called pastoral theology could be added to the list of studies, even in conjunction with the study of asceticism. . . . The mind of each one could in like manner be happily directed to the cultivation of liturgical and historical learning, "that he might be a perfect man of God prepared for every good work."'

2 Tim. iv.  
17IV. West.  
ix. 6

(7) 'The bishops, each in his own diocese, shall leave no stone unturned that a diocesan seminary may be set up in which the clerics may be taught philosophy and theology apart from any intercourse with lay boys. But in cases where dioceses are so poor that they cannot singly provide seminaries it has been provided by the Council of Trent that the bishops of several dioceses, by mutual arrangement, may form a common seminary.

7

(8) 'It is greatly to be desired that as Christ lived in the midst of His Apostles, so also should the rector of the seminary, together with those to whom the teaching of the students is entrusted, lead the common life among the seminarists, and both by word and example instruct, correct, and console them. And it would greatly add to the spiritual welfare of the students if a spiritual prefect were appointed in the seminary by the bishop. Superiors should ever bear in mind that the special and chief end of the seminary is that its inmates should learn to live to God alone in Christ.

*Ibid.* 12

(9) 'It is necessary that the greatest possible reverence and deference towards the office and the person of everyone in authority should be instilled into the minds of the young men whilst they are inmates of the seminary, and especially in reference to their own bishop, who is the shepherd and father of the clergy: of him they should speak only with filial veneration, and willingly and without murmuring yield, not only to his commands, but to his wish and advice. They should learn betimes the lesson of respect and deference, which should be shown to all alike, to the superiors

of seminaries, the rectors of missions, and the older priests, with whom as fellow workers they will one day be sent.

(10) 'As education is nowadays more widely defined than *Ibid.* 13 heretofore, it is meet that the course of studies for priests should be extended and be attended with greater care. It would therefore be desirable that the course of theology should comprise four years at the least. Theological studies must be attended to with the utmost earnestness, especially upon all points that are connected with dogma, morals, pastoral care, the spiritual and interior life, and the sacred liturgy. The students should likewise be taught the principles of common and canon law, the decrees and instructions of the provincial councils of Westminster, also sacred hermeneutics and ecclesiastical history. Moreover, since the clergy are trained to be leaders and teachers of souls, the false opinions of modern times should be treated by the professors with special attention, particularly those of philosophy which are propagated in every kind of literature and are constantly broached in ordinary society. In teaching seminarists no other authors or works should be used but those that have been approved beforehand by the ordinary. From amongst those students that excel in talent and studies some may be chosen, at the will of the bishop, after they have happily finished their prescribed courses, to go through a fuller course of theology at Rome or elsewhere.

(11) 'Since preaching the Word of God is one of the chief duties *Ibid.* 14 of a priest, and the salvation and sanctification of souls depend much upon it, it is essential that the young men should be taught the holy practice of preaching whilst in the seminary. They should read attentively St. Augustine's books upon *Catechising the Ignorant* and upon *Christian Doctrine*, and St. Charles's instructions . . . the seminarists should be sedulously practised in catechising the poor.

(12) 'It is part of a priest's duty to direct and lead by the *Ibid.* 15 hand consciences to perfection: hence the synod wishes that in the seminaries some time should be spent in ascetic theology, and that suitable instructions upon this branch should be given in order that the pious faithful with confidence may approach the pastors of souls for spiritual direction.

(13) 'Since in the course of time the students will have to *Ibid.* 16 attend to the management of missions and schools, they should study betimes and whilst in the seminary the mode of keeping the registers, and keeping an account of income and expenditure, as



prescribed by the Provincial Councils of Westminster. They should likewise be practised in writing official letters, whether upon ecclesiastical or civil matters, politely and with due regard to persons in authority.

*Ibid.* 20 (14) 'The proclamations of those to be ordained should be made beforehand in the seminary.

*Ibid.* 21 (15) 'Lastly, since a bishop, according to the teaching of Benedict XIV., is bound to know his own candidates for the priesthood, and on his conscience rests their ordination, it will therefore be his duty to visit them frequently as a pastor and father, that he may know his own and be well known by them: moreover he will provide and require that, at least once a year, he shall receive from every rector a distinct report of each seminarist concerning disposition, behaviour, progress in knowledge and in virtue, and perseverance in the vocation.'

13. An Instruction of the Sacred Congregation for extraordinary ecclesiastical affairs, 27 January, 1902, orders that 'no journal, even if a Catholic one, or organ of popular Christian action, may be introduced into seminaries, colleges, and schools depending upon ecclesiastical authority without the express leave of the immediate superiors, who should absolutely have beforehand the authorisation of their own bishop for every journal and review. As a general rule, it is not convenient that the time meant for ecclesiastical formation and study should be used in reading especially such journals as require particular safeguards and a truly Christian spirit in their readers.'

## SENTENCE

1. A sentence is a judicial decision on some controverted point made by the pronouncement of the judge for the purpose of putting an end to a dispute.

2. There are two kinds of sentences, viz. definitive and interlocutory.

3. A definitive sentence is one that, at the end of the trial, defines the principal cause or controversy brought into judgment. It is of three kinds:

(1) Absolutory: that is, freeing the accused of the charge made against him.

(2) Condemnatory: that is, establishing the charge and awarding punishment.

(3) Declaratory : that is, asserting the fact of the crime, and hence the infliction of the penalty prescribed by law.

4. An interlocutory sentence is one that is not concerned about the principal cause or controversy, but is given during the course of the trial—that is, from the citation (*q.v.*) to the final sentence—on some incidental matter or question, *e.g.* the admission of certain witnesses or the granting of longer delay. This kind of sentence is of two kinds :

(1) Merely interlocutory, *i.e.* remaining strictly within the limits, and therefore not affecting the main point at issue in such a manner as virtually to end it.

(2) Having definitory force, *i.e.* going further and affecting the main point itself at issue, *e.g.* a decision which precludes the hope of any other decision in the same instance, an imposition of a fine, a command, a declaration of incompetency and adjudication on the main causes, admission or rejection of a peremptory exception, an assertion that either party has sufficiently proved the cause.

5. A definitive sentence cannot be passed unless the substantial forms of procedure are observed. It must be delivered in writing, and pronounced from a written document. It cannot be delivered save by the judge sitting on the seat of judgment in the presence of the parties or their procurator, except due citation and contumacy be proved.

6. A definite sentence once proved cannot be revoked by the same judge.

7. A definite sentence admits of an appeal (*q.v.*). So does an interlocutory sentence that has definitory force, and is proved to cause great loss.

8. There is no appeal from merely interlocutory sentences, and the formalities required for a definitive sentence are not here necessary.

9. Before a definitive sentence is reached in an ordinary trial the cause should be concluded formally. In a summary one, the judge can pronounce his sentence before if it seem expedient and he be satisfied that the substantial parts of a process have been observed.

10. The sentence should always follow the terms of the libel (*q.v.*), for it is upon this that the judgment is sought.

11. The sentence itself must be absolutory, condemnatory, or declaratory. It must be certain, not conditional. It must be possible and in accordance with the laws of justice.

12. A sentence becomes a *res iudicata* if no appeal be made

within ten days, or if the appeal be abandoned, except in matrimonial causes whenever error is proved, and in causes regarding benefices.

13. The sentence usually carries with it costs for the winner (*q.v.*).

### SEXT

1. The SEXT is an authentic collection of constitutions issued by Boniface VIII. It contains the decretals of Gregory IX. that were promulgated after the completion of his collection and also the decretals of subsequent Pontiffs, together with the canons of the two General Councils of Lyons, 1245 and 1274.

2. The SEXT is divided into five books, and preserves the same form in titles and matters as in the *Gregoriana* (*q.v.*).

3. The name 'SEXT' comes from the fact that this collection is an addition to the five books of decretals.

4. It was addressed to the University of Bologna and probably to other universities.

5. It has the same force of law as the *Gregoriana* in all points which have not been changed by lawful authority.

6. The SEXT is quoted in this way :

c. *Gratia, De Rescriptis* in 6<sup>o</sup>.

That is, the chapter beginning with the word *Gratia* in the title *De Rescriptis* in the SEXT. The index to the titles shows that this is the third title of the first book of the SEXT.

### SIMONY

1. SIMONY is the deliberate will of buying or selling a spiritual thing, or something annexed to a spiritual thing, in exchange for a temporal thing as for a price.

2. This traffic in spiritual things is forbidden both by divine law and by ecclesiastical law.

3. There are four kinds of simony, viz. mental, conventional, real, and confidential.

4. Mental simony is the will or the internal proposition by which one giving or conferring a spiritual thing intends to oblige the other party to give in return something temporal, or *vice versa*. It is not purely mental like lustful thoughts or the bare mental proposal of simony ; but some external act manifests the presence of the simoniacal intention, *e.g.* the collation of a spiritual thing

with the intent of receiving in return something temporal. For this kind of simony there is no ecclesiastical penalty, for *de internis Ecclesia non iudicat*.

5. Conventional simony adds to the mental proposition an agreement or a pact. It is one when a spiritual thing is given with the external pact or tacit convention that a temporal thing should be received in return, or *vice versa*. Of this kind of simony there are two sorts :

(1) Purely conventional : that is, where there is only the pact but no tradition.

(2) Mixed conventional : that is, where there is both pact and tradition.

6. Real simony adds to the conventional an execution or tradition on both sides, completed or at least inchoative : that is, when the spiritual thing is given and part of the temporal is handed over.

7. Confidential simony is found where anyone gives to another or confers or resigns an ecclesiastical benefice, or presents to it and elects or institutes the elected or presented person, and confirms him, while making a certain confidential obligation—that is, an expressed or tacit condition—that this other person shall, as a debt, cede or resign it in a certain time, or give a pension from it. St. Pius V. has condemned this form of simony. Constit.  
*Intolera-*  
*bilis*, 1569

8. The matter, therefore, of simony is a spiritual thing, or something connected with a spiritual thing, *e.g.* sacraments and sacramentals, divine office, masses, prayers, acts of ecclesiastical jurisdiction as absolution from censures, indulgences, dispensations, presentation, collation, institution, &c. ; or, something annexed to spiritual things, *e.g.* the right of patronage, the fruits of a benefice, a pension attached, first fruits, oblations, &c.

9. The price paid for the spiritual thing, according to the divine law, is only that temporal thing which is given or offered as the price for the spiritual thing. According to the ecclesiastical law the price may itself be something spiritual, *e.g.* in the matter of benefices. But in this matter a spiritual thing may be exchanged for another spiritual thing by one's own authority without committing simony, *e.g.* giving one relic for another, a chalice for a *ciborium*.

10. The price of simony is called the *munus* in so far as it implies a debt *ex obligatione*. There are three kinds :

(1) *Munus a manu* : that is, money or money's worth.

(2) *Munus ab obsequio* : that is, ministry, service, or homage paid according to agreement.

(3) *Munus a lingua* : that is, praise, commendation, advocacy with the prelate to be made by agreement.

11. For simony, there is necessarily required a pact, at least on one part, whether it be an expressed or tacit one, of giving a spiritual for a temporal thing. Innocent XI. (1 March, 1679) condemned this proposition : ' To give a temporal for a spiritual thing is not simony when the temporal thing is not given as a price, but only as a motive for conferring or doing the spiritual thing ; also when the temporal be only a gratuitous compensation for a spiritual thing or *e contra*, ' the existence of some pact being understood.

*Prop.* 49

12. Hence an agreement, though only obliging out of kindness or gratitude and not *ex iustitia*, still induces simony : *e.g.* a man says to a patron, If you give me the benefice I will bind myself out of gratitude to serve you without any reward ; or if one person give another a temporal thing as a motive for giving him in return something spiritual, simony enters into the transactions. It can also come by giving presents to others to intercede with those who have the disposal of the spiritual goods of the Church.

13. An election becomes simoniacal, and therefore void, when for gaining any dignity or prelacy there is given or promised any temporal *munus*. And such election is null before sentence, even if the simony be occult. It is also null if the elect be altogether ignorant of the simony committed on his behalf by others, unless this was done fraudulently, *i.e.* by an enemy to hinder the election.

14. A patron cannot demand from the person that he presents anything by way of *munus* unless this be imposed in the deed of foundation ; and a presentation is simoniacal when anything is given or promised for obtaining the votes of patrons.

15. It is also simony to give or to accept anything for entrance into religion. But a poor convent can ask for something to be given for the decent support of the person.

16. There is no simony in receiving an alms *per modum stipendii* for the honest support of those who administer the sacraments or exercise an ecclesiastical function. Also taxes charged for expediting dispensations are not prices for the same, but are stipends either for chancery expenses or are of the nature of fines for exemption from the common law. Dispensations are odious to the body, and have therefore to be made difficult.

17. All real simony, even if it be confidential, incurs *ipso facto* the penalties prescribed by law.

Constit.  
Apostolice  
Sedis

18. Simoniacal entrance into religion induces upon all concerned excommunication and suspension from office. The religious

who has been received simoniacally must be expelled and confined in a strict monastery ; the superiors are also under the same penalty. All become infamous at law and irregular if the crime be notorious either *iuris* or *facti*. But the profession remains valid.

19. For simoniacal collation and reception of orders the penalty *Ibid.* is that both the giver and the receiver are *ipso facto* excommunicated. The ordainer, moreover, is suspended from ordaining for three years. If the simony be manifest, both are deposed from rank and office. The one ordained incurs suspension from all orders, and is deprived of office and benefices, together with inhability for obtaining others, if he be also a religious he is deprived of the active and the passive voice in elections.

20. The penalty for real simony as concerns benefices is that both the collator and the collated incur excommunication *latae sententiae* reserved to the Pope. The collation is null, and the obligation of making restitution of the fruits ill gotten binds, even *Ibid.* without a declaratory sentence. The person receiving the benefice through simony not only has no right to it but by sentence he can be made incapable for ever of possessing it or of any other. He can also, by sentence, be deprived of all other benefices, and be suspended perpetually.

21. The penalty for confidential simony is excommunication, privation of all benefices, perpetual inhability for receiving others, and the particular benefice in question becomes reserved to the Pope. These penalties are also incurred by conventional mixed simony.

22. Absolution from simony can only be had from the bishop if the simony be hidden. Open simony must be dispensed by the Pope, and the place obtained simoniacally has to be given up into his hands. If he think fit, after ordering a composition to be made, he can dispense the simony and by a new grant give the benefice back to the person in question.

23. The following causes excuse from simony :

(1) If the temporal be given for the spiritual, or *vice versa*, altogether *gratis* or without any pact expressed or implied, then there is no simony.

(2) If after the spiritual have been accepted something temporal is given, or *vice versa*, out of mere gratitude.

(3) If it be given so that an unworthy person or one less worthy should not be elected.

(4) If it be given to the ministers of the Church, not as the price, but *per modum stipendii*.

Q Q

(5) If the temporal thing be given for freeing oneself from unjust vexation.

(6) If the temporal be given on account of the labour of the work which is extrinsic to the spiritual ministry, and is only joined to it *per accidens*.

(7) If done in invincible ignorance.

24. Causes excusing from simony excuse also from its penalties ; but invincible ignorance of the penalties does not excuse from them except so far as censures.

### SOLICITATION

1. Solicitation *ad turpia* is one of the greatest crimes. It consists of soliciting *ad turpia* either in the act of sacramental confession or before or immediately after confession, or on occasion or pretence of confession, or even in the confessional outside of the occasion of confession, or in any place used for confessions if under the pretence of hearing confession. The solicitation may be by words, by signs, by nods, by touch, by a letter to be read either then or afterwards, or by dishonest and unlawful words or discussion. In a few words, any prostituting of the sacred Tribunal of Penance to sins of lust with another person, directly or indirectly, by occasion or pretence of confession, is the crime of solicitation *ad turpia* according to canon law.

2. The stringency of the legislation of the Church passed in order to preserve the sanctity of the sacrament from profanation in the hands of wicked persons is remarkable. Benedict XIV. in his Constitution *Sacramentum Poenitentiae*, confirming the decree of Gregory XV. 30 August, 1622, and that of the Holy Office, 11 February, 1661, orders that any confessor who learns that a penitent has been solicited *ad turpia* by another confessor is bound carefully to warn the penitent, according to the circumstances of the case, of the obligation she is under of denouncing the wicked one to the ordinary of the place, even if the solicitor had no valid jurisdiction for giving absolution, or if the solicitation were mutual or consented to or rejected by the penitent, or whether it were made, not for the confessor himself, but for another.

3. No lapse of time condones the solicitation or takes away the obligation of denunciation. Nor does good faith.

4. Absolution must be refused to such a penitent until either the denunciation is made or at least a promise is made that it shall be done as soon as possible.

5. On the other hand, those who calumniate an innocent party can only obtain absolution from the Pope except *in articulo mortis*.

6. The denunciation is to be made within a month from the time that the obligation is known. Those who refuse to do so, or culpably omit it, incur excommunication *latae sententiae*, absolution for which is not reserved. Constit.  
Apostolicae Sedis

7. The Holy Office decreed (27 September, 1724) that if a woman consented to the solicitation she is not bound to manifest the consent, and the bishop cannot question her about the point. The obligation is simply to denounce the fact of solicitation; moreover, the fact of consent, if avowed spontaneously, should not be entered in the acts.

8. The penitent must be told of the obligation of denunciation, although the confessor may certainly foresee that the denunciation will not take place.

9. If the penitent cannot go to the ordinary to make the denunciation it must be made either by letter or by a third person.

10. All anonymous denunciation is to be held as false and infected.

11. If after using all persuasions and threats the confessor cannot induce the penitent to denounce, he should then, suppressing the names, lay the case before the Penitentiary Apostolic.

12. The denunciation should be made to the bishop or to his delegate in the presence of an ecclesiastic, who should act as notary. The declaration must be signed by the denouncer, and is to be made on oath. It should be specific as to persons, places, times, and circumstances.

13. Although the obligation is personal, the duty may be accepted by the confessor, who may also be deputed by the bishop to receive the denunciation. In this latter case no notary is allowed, but the confessor takes the statement down in writing and, without keeping any copy or anything concerning it, gives it to the bishop.

14. Any persons mentioned as also likely to have been solicited are to be examined apart *per generalia ad particularia*.

15. After the denunciation is received the ordinary or ecclesiastical superior must inquire whether the denouncer be a person worthy of credit. In cases of solicitation one witness may be accepted if there be concurrent presumptions and probabilities. Hence all the circumstances of the case have to be most carefully weighed, and various persons examined, before the ordinary takes any further steps.



16. If the case be proved juridically or extra-juridically against the denounced confessor, he is to be suspended for ever from hearing confessions, and may be suspended *a divinis* by sentence condemnatory.

17. The whole process and everyone concerned in it are bound to the strictest silence. The bishop can proceed by suspending the culprit *ex informata conscientia* (*q.v.*).

Cf. *In-*  
*structio*,  
S.O.  
20 Feb.  
1867

18. In a difficult case the ordinary should send it to the Holy Office, which will act with its accustomed wisdom. It has supplied (20 July, 1890) the form of examining witnesses when done without the intervention of a notary.

### SPIRITUAL RELATIONSHIP

1. Spiritual relationship is a matrimonial impediment of ecclesiastical origin, and is founded in reverence to the sacraments of Baptism and Confirmation.

2. The Council of Trent has limited it to the following cases. Spiritual relationship exists :

- (1) Between the baptizer and the person baptized.
- (2) Between the baptizer and the father and mother of the person baptized.
- (3) Between the god-parent and the god-child.
- (4) Between the god-parent and the father and mother of the god-child.
- (5) Between the god-parent in confirmation and the god-child.
- (6) Between the god-parent in confirmation and the father and mother of the god-child.

3. The impediment of spiritual relationship is a diriment impediment (*q.v.*) : that is, it makes the matrimonial contract null and void.

### SPONSALIA

1. *Sponsalia* are a necessary preliminary to matrimony (*q.v.*).

2. There are four things to be inquired concerning *sponsalia*, viz. :

- (1) What are *sponsalia*, and what are the essentials ?
- (2) What are their accidentals ?
- (3) What are their effects ?
- (4) Whether and for what causes can they be dissolved ?

### § 1. *The Essence of Sponsalia*

3. *Sponsalia* are defined to be a deliberate promise, mutual and true, expressed by a sensible sign, of a future marriage between certain determinate persons who are *de iure* habile.

4. The promise must be mutual : that is, it must be given and accepted by both parties. Hence *sponsalia* do not exist if only one party promise and the other accept but both do not mutually promise and accept.

5. The promise must be *true*. Hence a mere proposal is not sufficient ; neither is a promise of contracting *sponsalia*. A feigned or jocose promise is not enough ; but in the external *forum* a promise is not presumed to be feigned or jocose ; it must be proved.

6. The promise must be *free*. Hence those who are made intoxicated or lack the use of reason cannot contract true *sponsalia*.

7. The promise must be manifested in some external manner, either by words, by writing, or by other signs which, according to the common understanding and the custom of the place, are taken as expressing the promise of future matrimony.

8. The promise must pass between determinate persons who are *de iure* capable of the contract ; and this implies two points :

(1) Competent age : that is, years of discretion or seven years old.

(2) Absence of impediments (*q.v.*), either diriment or impedient.

### § 2. *The Accidentals*

9. The accidentals of *sponsalia* concern the mode and the accessory pacts.

10. The modes in which *sponsalia* can be contracted are various. They can be :

(1) Simple : that is, as no day or condition is mentioned, they immediately bind, though a certain time is to be given for fulfilling the promise.

(2) For a fixed day : that is, when the promise is for a marriage to take place within a certain time. If this time lapse without the promise being fulfilled each party may return to their freedom.

(3) Conditional : that is, when the promise is made under certain specified conditions. If these be not fulfilled the promise does not bind. If the condition be base and against the substantial

part of matrimony the *sponsalia* are null; if it be only base or impossible it is to be accounted as not made.

11. The accessory pacts are earnest money and penalties to be imposed on those who unjustly refuse to keep their promise.

### § 3. *The Effects of Sponsalia*

12. There are two chief effects of *sponsalia* :

- (1) One springing from the natural law concerning contracts.
- (2) One arising from the provisions of the positive law.

13. *Sponsalia* once existing, there arises between the engaged parties an obligation upon each of fulfilling the contract at the request of the other, unless there be a lawful cause of either deferring the marriage or of breaking the contract.

14. *Sponsalia* have also, from positive law, the effect of creating the diriment impediment (*q.v.*) of public honesty (*q.v.*).

15. If anyone refuse to fulfil his promise of marriage, two remedies are provided by canon law, viz. :

- (1) A monition made by the ecclesiastical judge.
- (2) The infliction of ecclesiastical censure.

But these are left to the prudence of the ordinary.

### § 4. *The Dissolving of Sponsalia*

16. *Sponsalia* may be dissolved in many ways. When the following causes are manifest no sentence of a judge is required for the dissolution of the contract; but when they are occult the sentence is necessary. But should a man, knowing that *de iure* he can withdraw from his promise, nevertheless have carnal knowledge of the woman, he is considered tacitly to have removed his rights and to have ratified the *sponsalia*.

17. *Sponsalia* can be dissolved by the mutual consent of those who are arrived at the age of puberty; according to the rule, *Omnis res per quascumque causas nascitur, per easdem dissolvitur*.

18. They are dissolved by a marriage validly contracted with another person.

19. By a supervening diriment impediment, *e.g.* by the contraction of affinity (*q.v.*) arising from the fornication of one party with a blood relation, in the first or second degree, of the other party.

20. *Sponsalia* are also dissolved by the departure of one person into a far country without the consent of the other. This means,

of course, with the intention of remaining away, at least for a long time.

21. Many canonists hold that *sponsalia* are dissolved in favour of the innocent party by a notable and culpable delay of either party to fulfil the contract within the agreed time.

22. Fornication of either party with another after *sponsalia*, even if they be confirmed by oath, dissolves the contract so far as the innocent party is concerned.

23. Profession of either party in an approved order or receiving sacred orders also dissolves *sponsalia* on account of the supervening diriment impediment.

24. Should there happen to one of the parties a notable change which in the estimation of a prudent judgment would have prevented consent to the contract, *e.g.* a notable deformity, mutilation, contagious disease, infamy, grave family or personal quarrels, loss of property, of dowry, corruption of morals, heresy, &c. the *sponsalia* may be dissolved. If these or others be found out after *sponsalia* are made, they dissolve the contract, but not otherwise. An access to fortune does not dissolve *sponsalia*.

25. If a bad result be feared from the marriage, such as great scandal and disturbance, the *sponsalia* can be dissolved.

### STYLUS ROMANAE CURIAE

1. The Stylus of the Roman *Curia* is that mode of doing business in the *Curia* which has been evolved by papal constitutions and custom.

2. As regards the matter Reiffenstuel says : The *Stylus Curiae* has the force of law ; so if anything be considered in the Roman *Curia* as belonging essentially to the validity of the act, *e.g.* the existence of a certain final cause for a dispensation, its absence affects the validity.

3. As regards the mode or the formalities, the *Stylus* does not bind out of Rome ; but the violation may arouse suspicion of the authenticity of the act.

### SUBDEACON

1. The subdeacon's office is, since the time of Urban II., the first of the sacred orders.

2. It is an order which confers a special power of serving the deacon at high mass and of solemnly singing the epistle.

3. The subdeacon is bound by law to celibacy (*q.v.*), and by custom, if he have no benefice, to the divine office.

4. The legitimate age for receiving the subdiaconate is twenty-two, at least begun, and the subject must have been confirmed.

5. The subdeacon has to be ordained upon a title (*q.v.*).

xxi. n. 3

6. He must have the competent knowledge, and the First Provincial Council of Westminster says that he is to be examined in one treatise, at least, of theology.

## SUBREPTION

1. Subreption is a vice in a rescript (*q.v.*) arising from fraud. It comes from omitting in the petition something that truth demands should be stated. It is false *per consequentias*. Some authors hold that subreption is the fault of obtaining acts by advancing facts contrary to the proof; *subreptio fit subiecta falsitate*. But others say that it consists in the omission of the truth.

2. Subreption is often confounded with 'obreption' (*q.v.*), and produces the same effect.

3. Subreption vitiates a rescript in certain cases :

(1) If the subreption be fraudulent or malicious.

(2) If it labour under subreption a rescript of grace is *ipso iure* null.

(3) If it concern the motive of the rescript.

4. Subreption does not vitiate a rescript :

(1) If it be done through simplicity or ignorance.

(2) A rescript of justice is not vitiated *ipso iure*, but only by way of exception.

(3) If it concern the impulsive cause of the rescript and does not affect the substantial part of the petition. *Utile non debet per inutile vitari*. If from an inspection of the document it be not clear whether the cause be motive or impulsive the latter is to be held, for *in dubio standum est pro valore actus*. See CLAUSULAE.

## SUBSIDY

1. A bishop has the *Ius subsidii caritativi*: that is, for a just cause, he can ask, in an extraordinary way, for a necessary subvention from his clergy when the income of his church is not sufficient to support the burthens imposed upon him.

2. Thus the bishop can demand from the incomes of parishes

what is necessary for any particular case, *e.g.* he can take a sixth part of the pew-rents for the support of sick or aged priests.

3. The Third Council of Lateran allows this subsidy to be made, but states these conditions for its lawful demand :

(1) There should be a reasonable and clear cause.

(2) That the subsidy should be moderated with charity.

4. The advice of the chapter must be sought.

5. The subsidy is to be demanded only from those who possess benefices.

### SUMMONS. *See* CITATION

### SUPPORT OF SUSPENDED OR DISMISSED PRIESTS

1. The support of suspended or dismissed priests is one which requires attention. The principles affecting the question are as follows :

2. Only those ecclesiastics who work in the ministry are entitled *ex iustitia* to receive from the Church a *sustentatio congrua*—that is, not a scanty but a comfortable support.

3. If one by criminal conduct make himself unworthy of the clerical state he cannot have the same claim for support *ex iustitia* as those who are faithful to their obligations.

4. On the other hand a suspended or dismissed priest may be given what is necessary for his bare support. 'Dismissal from a benefice always leaves the cleric who is dismissed the right to the means of subsistence. The ecclesiastical judge is bound in conscience to provide for the support of the person condemned, and, if he refuse to do this duty of justice, he can be compelled to do so by his superior. He should assign to the cleric who is deprived of his benefice, and who has no other means of subsistence, an alimentary portion or keep him in a monastery, according to the gravity of the offence, and not allow him to wander about deprived of all the means of living. For, says the sacred canons, *paupertas cogit ad turpia*.'

Stremier,  
pp. 31-33

5. A cleric, though he be suspended, remains a cleric, and as such is forbidden to follow a secular calling. The Council of Trent says : 'It becometh not those who are enrolled in the divine ministry to beg or to exercise any sordid trade to the disgrace of their order.' It is for this reason that the Church insists upon a title for ordination.

Sess. x  
c. 2, d. r.

6. Hence, when suspending or dismissing a priest, the Church does not take away from him all means of living ; neither does she treat him in the same honourable way that she treats her worthy sons. She gives him a means of support, moderate and scanty, such as will keep him from actual want.

7. This support, however, is only given on two conditions :

(1) That the delinquent be willing to amend. Should he persist in his evil way he has no claim to anything unless he be in extreme need or in danger of starvation. As a rule a provision is made for the delinquent by paying his pension in a monastery or other religious establishment, where he can always obtain the necessaries of life.

(2) That he has no private means. For the Church only supplies for necessity.

8. The above principles are conformable to the decree S.C.P.F. 4 February, 1873. The Instruction of 20 July, 1878, and that of 1884 are to be read in connection with the above decree.

## SUSPENSION

1. Suspension is a censure (*q.v.*) by which a cleric is prohibited to exercise certain ecclesiastical acts which are otherwise competent to him.

2. There are various kinds of suspension :

(1) Suspension from office. This is subdivided into :

*a.* From office simply.

*b.* From order only.

*c.* From jurisdiction only.

(2) Suspension from benefice.

(3) Suspension from office and benefice. This last may be of two kinds :

*a.* Total.

*b.* Partial, *e.g.* from one third or one fourth of the benefice and from certain functions of the office.

3. Considered as to the source, suspension is threefold :

(1) Inflicted *a iure* : that is, laid down in law for certain offences.

(2) Inflicted *ab homine* : that is, by an ecclesiastical superior on account of doing or not doing some particular act.

4. There is another kind of suspension which is treated apart, *i.e.* suspension *ex informata conscientia* (*q.v.*), which is inflicted as a punishment, not as a censure, which is, of itself, medicinal

rather than penal. The censure requires monition (*q.v.*); the punishment (*q.v.*) does not.

5. One who is suspended *ab officio* simply remains suspended from every use of the order and of the jurisdiction attached; while one suspended *ab ordine* only remains suspended from every use of order, but not of jurisdiction.

6. One who is suspended simply from jurisdiction is deprived of both external and internal jurisdiction: *e.g.* a bishop so suspended cannot even grant dimissorials; a *parochus* cannot baptize. But suspension of this kind has no force outside of the territory of him who inflicts it.

7. One suspended from a lower order is not thereby suspended from a higher order unless the exercise of this is contained in the exercise of that. In the same way one suspended from a higher order is not thereby suspended from the lower, which is not necessarily connected.

8. One suspended from conferring minor orders is suspended also from giving the sacred orders, but not *vice versa*.

9. One suspended from *pontificalibus* is held to be suspended only from that which cannot be exercised without the episcopal order. Hence if such a one celebrate in the episcopal vesture he does not violate the suspension.

10. Suspension from a benefice is the privation of the right of receiving the income and of administering the benefice itself. Hence one so suspended does not lose any other rights attached to the possession of the benefice, *e.g.* taking part in an election.

11. If this suspension be indeterminate it refers to every benefice held in the territory of the suspender; if it be determinate then it refers solely to the benefice mentioned.

12. A cleric may be suspended from his benefice:

- (1) So that he cannot enjoy the fruits.
- (2) So that he cannot administer it.
- (3) So that he can neither enjoy nor administer it.

13. The term *fruit* means all certain income, not casual fruits, such as stole dues, distributions (*q.v.*).

14. In the case of a person suspended from his benefice and having no other means of livelihood, it is necessary to distinguish the cause of suspension. If it be on account of contumacy (*q.v.*), only in cases of extreme want can he have the bare necessities of life from his benefice. If it be as a punishment for some fault, the suspended person is deprived of necessities only so long as he does not do his duty.



15. Suspension as a censure (*q.v.*) can only be inflicted for a fault joined with contumacy after the monition; the cause of the sentence must be put in writing. If it be done by word of mouth it is counted a greater punishment than censure unless it be done after the fashion of a precept: *e.g.* if the bishop order a cleric to dismiss a servant within three days under pain *ipso facto* of incurring suspension.

16. Suspension can be inflicted *ad cautelam* for suspicion only of a crime; but this cannot be from the fruits of the benefice without monition or by word of mouth.

17. Suspension from office or from benefice is violated as often as any act forbidden to the suspended person is done by him or shared by him in the doing thereof by others. One suspended from his office incurs also irregularity (*q.v.*) if he knowingly and solemnly exercise his office except in cases of great necessity or of great inconvenience.

18. One suspended from his benefice, if he take the fruit or administer the property, does not become irregular, but *ipso iure* loses the benefice itself, and is obliged to restitution.

19. Suspension can be inflicted by the Pope and by the bishop and by all who can excommunicate; for all censures are ordained to the same end, viz. the repression of contumacy.

20. Regularly speaking, the sentence of suspension is to be passed in writing.

21. Not only individuals but corporations can be suspended. Hence a chapter can be suspended in three ways:

- (1) Collectively, *i.e.* as a whole.
- (2) Individually, *i.e.* as regards each member.
- (3) Collectively and individually.

22. Bishops do not incur suspensions *a iure* unless special mention be made of them.

23. One who is suspended from office and jurisdiction in one place is suspended in all places.

24. Suspension *a divinis* inflicted during an appeal is invalid.

25. Suspension as a censure being inflicted on account of contumacy or disobedience cannot be removed while the contumacy or disobedience continues.

26. A suspension *a iure* can be removed by the bishop or by others with quasi-episcopal jurisdiction unless its absolution be reserved to the Pope.

27. Suspension *ab homine* as a punishment is removed by the one who inflicts it or by his superior on appeal.

S.C.C.  
19 Aug.  
1724

28. Suspension inflicted for a determinate time or *sub conditione* lapses by the expiration of the period or the fulfilling of the condition ; and it requires no more declaration on the part of the superior.

29. There is no prescribed form of absolution.

30. But before absolution can be given there must be exacted a promise of not doing the unlawful deed again, and of abiding by the commands of the Church. If the crime for which the suspension was inflicted affected a third person, a further promise has to be made that all due satisfaction will be made.

### SUSPENSION EX INFORMATA CONSCIENTIA

The S.C.P.F. by an Instruction dated 20 October, 1884, has laid down these general rules :

1. Suspension *ex informata conscientia*, as well as that inflicted by a judicial sentence, forbids a cleric from exercising his orders, grades, or ecclesiastical dignity.

2. It differs from a judicial suspension chiefly in this, that it is made use of as an extraordinary remedy in punishment of a crime that is admitted ; hence judicial forms and canonical monitions are not required. It is sufficient for the prelate to make use of a simple precept which declares that he suspends the person from the exercise of his office or dignity.

3. This precept is always to be given in writing, with the date affixed, and it should be given either by the ordinary in person or by someone expressly deputed. The document must contain a statement that the suspension is passed by the force of the Tridentine decree, Sess. 14, c. 1, *d. r.*, *ex informata conscientia*, or on account of causes known to the ordinary himself.

4. Moreover the extent of the suspension must be expressed : that is, the part of the exercise of the order or office which is affected. If an *oeconomus* (*q.v.*) be appointed to the office, his stipend should be fixed at the prudence of the ordinary, against which an appeal may lie.

5. The duration of the suspension should be expressed, and ordinaries should refrain from inflicting suspensions *in perpetuum*. If for grave causes the ordinary impose it, not for a determined time, but *ad suum beneplacitum*, then it is to be considered as a temporary suspension, and ends with the jurisdiction of the inflictor.

6. Crime or a fault (*culpa*) committed by the person suspended is a just and lawful cause for suspension *ex informata conscientia* ; but this crime or fault should be an occult one, and so grave as to merit such a punishment.

7. For a crime to be occult it is enough that it has not been made the matter of a public judgment nor of general knowledge, nor known to that number and kind of persons which would induce notoriety (*q.v.*).

8. But the suspension holds good if one out of many faults or crimes becomes generally known ; or if the crime, which was occult at the time of suspension, afterwards becomes publicly known.

9. It is left to the prudence of the ordinary to disclose to the delinquent the cause of the suspension or the fault for which it is inflicted. Pastoral solicitude and charity, however, demand that if a punishment of this kind be manifested to the suspended person it should serve by paternal warnings, not only for the expiation of the fault, but also for the amendment of the wrong-doer and for the removal of the occasion of sin.

10. Prelates, however, should remember that, if a recourse be made to the Apostolic See against the decree which inflicted the suspension, they will then have to prove the fault which led to the censure. It will therefore be advisable, before inflicting such a punishment, to gather together the proofs, even extra-judicially and secretly, so that they may proceed with all certainty of the guilt when inflicting the punishment ; and if afterwards the cause is to be examined before the Apostolic See there may be no difficulty in producing the proofs of the crime, as often occurs in judgments of this kind.

11. There is no appeal to a higher tribunal from a decree of suspension *ex informata conscientia*. Therefore the cleric, once having received notice of the suspension, incurs irregularity if, on the strength of an appeal, he minister at the altar or in any way presume solemnly to exercise his order.

12. But there is always open an approach to the Apostolic See ; and in case a cleric consider that he has been punished in this way without sufficient or reasonable cause he can have recourse to the Supreme Pontiff. But, meanwhile, the suspension remains in full force until the Pope, or the Sacred Congregation to whom belongs the judgment, decides that it is either to be released or moderated.

13. This kind of punishment should be an extraordinary remedy

used especially for expiating a crime without the form of judgment. But a bishop should have before his eyes what most wisely Benedict XIV. advises in his treatise *De Synodo Dioecessana*, lib. xii., c. viii., n. 6, viz. that the bishop would be reprehensible if he were to declare in synod that he was in future going to proceed with suspension *ex privata tantum scientia* against those of his clergy whom he found to have sinned gravely when their fault could not be conclusively proved in the *forum externum*, or that it was not expedient to make it known.

14. In addition to this Instruction it may be well to say that suspension *ex informata conscientia* is not the same as extra-judicial sentences; and these are not always *ex informata conscientia*. It is clear from the Instruction that only two kinds of extra-judicial sentences are *ex informata conscientia*, viz. those which forbid one to receive sacred orders or suspend one from orders received. From such sentences there is no appeal except to the Holy See. In all other extra-judicial sentences the appeal lies to the metropolitan.

15. Dismissal from a mission is not *per se* a suspension; and it cannot be inflicted *ex informata conscientia*.

## SYNOD

1. A synod is defined by Benedict XIV., in his classic work *De Synodo Dioecessana*, as 'a lawful assembly convoked by the bishop in which he assembles the priests and clerics of his diocese, and also all others who are bound to attend it, for the purpose of doing and deliberating concerning what belongs to the pastoral care.'

Lib. i.  
c. 1, n. 4

2. Hence a synod is not merely an assembly to listen to decrees, but it is one for deliberation and for the transaction of business.

3. The bishop alone is the lawgiver in the synod. The decrees do not require the approbation of the assembly before they become law.

4. The holding of a synod is of obligation once a year. The Council of Trent, confirming a decree of the Fourth Lateran Council, says:

'The synods of each diocese shall also be held every year, at which all, even exempt persons who otherwise would be bound to attend if the exemption ceased, and who are not subject to general chapter, are bound to be present. Those who have charge either of parochial or other churches of seculars, even if annexed,

Sess. xxiv.  
c. 2, d. r.

whoever they may be, are bound on account of those churches to be present at synod. If metropolitans or bishops, or any of the above mentioned, are negligent concerning what is here prescribed, they will incur the penalties laid down by the sacred canons.'

5. Though synods in themselves are not absolutely necessary, as the end for which they are designed can be obtained by other means, yet they are the prescribed and recognised method of the Church; for then, says Benedict XIV., the bishop has an opportunity of meeting his clergy and of becoming aware of the state of his diocese, and of taking such measures for the spiritual welfare of the faithful as are fitting for the times and circumstances.

6. The convocation of the synod can be effected by :

(1) The bishop of the diocese, whether he be consecrated or not.

(2) The vicar general (*q.v.*) if he have a special mandate.

(3) The vicar capitular (*q.v.*) by his ordinary power if a year have elapsed since the last synod.

7. An archbishop elect, *i.e.* who has not yet received his pall, cannot convoke a synod.

8. The bishop is not obliged to consult his chapter as regards convoking a synod or in the other preparatory acts.

9. Those who have to be summoned are the vicar general, the cathedral chapter *nominatim*, those who have cure of souls, whether they be parish priests, or perpetual vicars, or moveable *ad nutum*. Also all those who are beneficed in the diocese if such be the custom. Lay folk can be summoned to the synod, though Benedict XIV. thinks only for a grave and urgent cause. But it would seem that if they can be invited to a provincial council there can be no valid reason against their being summoned to a diocesan synod. Those who are summoned are obliged to attend, and can be punished with censures if they fail without a lawful excuse.

10. Before the synod take place the bishop is bound, for the validity of the act, to consult his chapter as to the proposed decrees; and the fact of his doing so should be registered in the capitular acts.

11. In the synod the bishop being, as has been said, the sole lawgiver, the clergy have no decisive voice, nor any right to a consultive voice. But as, according to Benedict XIV.'s definition of a synod, one of the purposes of the convocation is for

S.C.C.  
4 Dec.  
1653

deliberation, those bishops act in a praiseworthy manner who do not fail to get the opinion of the synod about the statutes they are going to publish. 'For,' says Sebastianelli, 'this, besides being very grateful to the clergy and showing the mildness of paternal government, is also very useful, because, not only from the sense of the assembled clergy can the bishop better gauge what is most useful in decrees and remedies for the necessities of the diocese, but also because more easily and efficaciously will those statutes be executed which the whole of the clergy have approved.'

Vol. i.  
p. 337

12. The decrees of the synod have binding force and become part of the particular law of that diocese until abrogated in the formal way.

13. Besides the making of decrees there are other businesses that have to be transacted at the synod, viz. the appointment of synodal judges (*q.v.*) and synodal examiners (*q.v.*). In some synods there are also appointed synodal witnesses who bring up at synod what is to be discussed, or are appointed by the synod to inquire throughout the diocese for what may need correction and to report the same to the next synod. The profession of faith has also to be received from all those who attend the diocesan synod for the first time. Decrees also of the provincial council have to be promulgated within six months of its holding.

*Ibid.*  
p. 338

14. Certain matters, however, are beyond the competency of a diocesan synod, viz.:

- (1) All questions concerning the faith.
- (2) All questions disputed between canonists or theologians.
- (3) All matters contrary to the established common *ius*.

15. The officials to be nominated in the synod by the bishop are:

- (1) A secretary.
- (2) A promotor.
- (3) A notary (*q.v.*).
- (4) A *procurator cleri* (*q.v.*), who should submit the *gravamina* of the clergy in writing to the bishop.
- (5) Masters of ceremonies.

16. After the publication of the decrees a term of two months is set before execution is enforced, so that appeal may be made either to the bishop or to the Holy See.

17. The date of the synod should be published on the Epiphany in the cathedral during mass, and the decree of convocation should be placed *ad valvas* for at least one month beforehand. It should

R R

also be announced in the parish churches, and prayers ordered for the three preceding Sundays.

xxix. 5

18. The First Provincial Council of Westminster decreed :

‘ Each bishop shall hold a diocesan synod, if possible, every year.’

### SYNODAL EXAMINERS

1. Synodal examiners are those appointed in synod, with the consent of the clergy, for the purpose of holding the examinations known as *concursus* (*q.v.*).

2. The reason of their appointment in synod is that, in the matter of such benefices as are distributed after *concursus*, fear of partiality may be lessened, and that those who are to be examined may have a voice in the nomination of the examiners.

3. The election of the examiners must be made :

(1) By name and surname.

(2) Not by the title of the office, *e.g.* the Prior of the Servites.

(3) They must be proposed by name to the clergy in synod for their approval.

4. If any of the above conditions are wanting the deputation is null.

5. The clergy can approve of the names either by secret or open voting as the bishop wills.

6. The synodal examiners must be at least six in number, and may be as many as twenty.

7. They have to be elected every year, and only hold their office from one yearly synod to another.

8. The Council of Trent decrees :

‘ As regards the examiners, six at least shall be annually proposed by the bishop or by his vicars in the diocesan synod : they shall be such as shall satisfy and shall be approved of by the said synod . . . and they all shall swear on the holy gospels of God that they will, setting aside every human affection, faithfully perform their duty.’

Sess.  
xxiv.  
c. 18

9. The oath is essential, and without it the examination is not lawful and the *concursus* is null.

10. If one of the examiners have not taken the oath the whole act is null.

11. The oath may be taken in or out of synod.

12. The synodal examiners cannot accept any gratuity. The Council of Trent says :

S.C.C.  
2 Dec.  
1628

'And they shall beware of receiving anything whatsoever, either before or after, on account of this examination ; otherwise both the receiver and the giver will incur the guilt of simony from which they shall not be capable of being absolved until they have resigned the benefices of which they were possessed in any manner whatsoever even before this act ; and they shall be incapable of any others for the time to come.' *Ibid.*

13. After the examination the examiners should report to the bishop those whom they find to be fit.

14. Approbation in the *concursum* is given to those who have gained more than half of the votes.

15. The examiners may vote openly or secretly ; though it is better that they should confer together. The voting must take place while the examiners are together.

16. The notary simply inserts in the acts that D. is approved and E. is not approved.

17. Examiners are bound to take into consideration morals, age, and other qualifications, and so report on them to the bishop so that he may elect the worthiest candidate.

18. It does not fall within the examiners' province to judge which one of the candidates is the most worthy ; and while they are bound to give their votes, the bishop is not obliged to follow their opinion.

19. If the bishop be present at the *concursum* he can give a casting vote for approbation.

20. If some of the examiners die or go away before the next synod the bishop must make use of the remaining persons if they be at least six in number ; and he cannot substitute others while six remain.

21. But if there be less than six, then the bishop can choose others, provided that—

(1) They are 'doctors or licentiates in theology or canon law, or such other clerics, whether regulars, even of the order of mendicants, or seculars as shall best seem adapted thereunto.' *Trent, ibid.*

(2) That they be approved of by the chapter.

(3) And not be more in number than is necessary to make up six with those already remaining.

(4) If elected within the synod year, as soon as that date is passed they cease to be lawful examiners.

22. After the expiration of the year, if there be not remaining six of the examiners elected in synod, the bishop must, in order to have a valid *concursum* :



(1) Either celebrate a new synod.

(2) Or apply to the Holy See to appoint pro-synodal examiners.

S.C.C.  
20 Sept.  
1645

23. The synodal examiners are only in office for a year, and the permission of the Holy See has to be renewed.

24. If the chapter be unreasonable in refusing to approve of those whom the bishop seeks to depute as pro-synodal examiners the bishop must apply to the Holy See to supply this defect.

25. In the United States the synodal or pro-synodal examiners have to be appointed with the advice of the diocesan consultors (*q.v.*) when the synod cannot be held every year. They may be appointed in or out of synod, but when they are appointed in synod the advice of the assembled clergy is necessary, but not their consent. When the bishop wishes to appoint them out of synod he has to obtain the leave of the Holy See and to have the advice of his consultors. From the difference in the way of appointment it cannot be said that these diocesan officials in the United States are canonical synodal, or pro-synodal examiners who require the consent either of the clergy or the chapter before their appointment is valid. It would seem that these quasi-synodal examiners, who are six in number if possible, are appointed permanently and not from synod to synod. In case of death the bishop fills the vacancy after hearing the advice of his consultors.

### SYNODAL JUDGE

1. Synodal judges are ecclesiastics appointed in synod as being capable of being delegated by the Holy See for judging canonical causes outside Rome.

2. The Council of Trent decreed that in each provincial or diocesan synod some persons having the qualifications required by the *statutum* of Boniface VIII. should be appointed so that besides the ordinaries of the places there may be others at hand to whom ecclesiastical causes can be committed in case they are sent to be tried on the spot.

3. If one of these synodal judges die, the bishop of the diocese, with the advice of his chapter, substitutes another until the next synod, provincial or diocesan.

4. There must be in every diocese at least four persons to whom legates or the Holy See can remit cases.

5. After appointment the bishops have to send in the names without delay to the Holy See; and all other delegations addressed to other judges are to be held subreptitious.

6. The council exhorts all judges to endeavour to expedite the course of justice and to use all means for this end.

7. For the validity of the deputation of synodal judges the consent of the synod is not required; but they must be appointed in synod after hearing the advice of the assembled clergy.

*Cf.* Trent, Sess. xxv. c. 10, d. 7. Benedict XIV. *De Synodo*, iv. c. 5, n. 5

8. Benedict XIV., Constit. *Quamvis paternae*, 26 August, 1741, decreed that, if the synod be not held, the metropolitan and his suffragans can appoint the judge with the consent of the chapter; but if it be only to fill a vacancy caused by death, only the advice of the chapter is needed.

9. The S.C.C., March 1601, declared that synodal judges have no jurisdiction before receiving a delegation from the Pope, or legate, or an apostolic nuncio; and that after such a delegation they must employ a notary ecclesiastic for taking cognisance of the cause.

S.C.C. 15 Jan. 1656

10. The Pope has always power to delegate *ex certa scientia* other persons to perform the office of judges.

11. The present practice, however, is that almost all causes brought before the Holy See are settled by the various congregations to which they belong; so it is rarely that such causes are referred to synodal judges.

Santi. i. p. 260

12. The execution of apostolic letters (*q.v.*) and of rescripts (*q.v.*) is confided to the ordinaries, not to synodal judges.

#### TAMETSI. See CLANDESTINITY

### TAXA INNOCENTIANA

1. Pope Innocent XI. in 1678 issued a decree regulating the fees that can be demanded or received for the various acts, instruments, or writings that are expedited from an episcopal chancery.

2. According to this decree, bishops or their officials cannot ask or receive anything, although freely offered, in the following cases:

(1) For ordinations or anything concerning orders, *e.g.* dimissorials.

(2) For institution to benefices with or without cure.

(3) For matrimonial dispensations. Here, while no charge can be made, alms can be received, and the amount may be suggested. These alms must be applied to pious uses.

3. The chancellor, however, may receive a moderate fee for his trouble in expediting the necessary documents, except in the case

of permissions to say mass, administer the sacraments, preach, and the like.

4. The amount of these fees is fixed by Innocent XI.; and in each episcopal chancery a list should be drawn up as much in proportion to the amounts of the *Taxa Innocentiana* as the difference between money in 1678 and the present time allows.

5. None of the money received from these fees can be used by the bishop for his personal use without the leave of the Holy See.

8 Oct.  
1678

6. The *Taxa Innocentiana* is in substance binding all over the world, and the S.C.C. ordered that the list should be kept in a conspicuous place in the episcopal chancery and be accurately observed.

7. The S.C.C. 10 June, 1896, decreed that while taxes could be imposed according to the rules of prudence and justice in sacramental matters, and especially as regards matrimony and benefices, yet it ordered that sacraments should be conferred freely, and that pious customs should be observed. Regarding other acts not directly concerned with the administration of the sacraments, as dispensation from banns, &c., the Sacred Congregation decrees :

(1) That laudable customs be observed, and prudent consideration given to times, places, and persons.

(2) That those who are truly poor are to be exempt from all taxes.

(3) That the amount is not to be such as will keep people from the sacraments.

(4) That as regards matrimony, the taxes are to be remitted if there be danger of concubinage.

(5) That as regards benefices, the taxes should be proportioned to the income.

(6) That the amount is not to be left to the will of individual bishops, but it is to be settled in provincial council or, when that cannot be held, in a meeting of the bishops summoned for this purpose. Their agreement is to be sent to the Holy See for its approval, which is granted *ad instar experimenti* for five years in European countries ; and in others for ten years.

*Acta*  
*S. Sedis*,  
vol. xxix.  
p. 433

## TESTIMONIAL LETTERS

1. Testimonial letters are documents testifying that the bearer has received certain orders and is free from canonical censure. They do not testify to the probity of life or to the integrity of morals.

2. Testimonial letters are required in the following cases :

(1) When a cleric ordained by a bishop who was by reason of one title his own bishop, is to be promoted to higher orders by another bishop who by reason of another title has become his own bishop, testimonial letters of the former bishop are required.

(2) When a cleric receives orders from a bishop by reason of benefice or domicile, the testimonial letters of the bishop of origin are needed.

(3) When a cleric is to receive orders by reason of service, the testimonial letters of the bishop of origin and of the bishop of domicile are also required.

(4) In general, if a cleric have dwelt for some long time away from his diocese, he requires the testimonial letters of the bishop of the place before he receives orders from his own bishop. The S.C.C. 26 January, 1895, has decided that the time of absence from the diocese is three months for those who are already clerics ; for others the common opinion is that the period is six months.

3. The penalty for ordination without testimonial letters is suspension *ipso iure* for a year from the administration of orders for the ordainer ; and suspension from the order received, at the will of his own bishop, for the one ordained.

## TITLE

1. Title in law is the cause upon which possession is to be used, and the act by which this right is proved.

2. There are several kinds of titles, among which it is necessary to specify the following :

(1) *Verus* is that which exists in the thing itself, and to which nothing is wanting so that the right in question can be transferred : *e.g.* if a cleric received a benefice lawfully from the ordinary he has a true title to the same.

(2) *Coloratus* is that in which nothing seems to be wanting, but in which, as a matter of fact, there lurks a secret defect. Hence nothing is transferred on such a title : *e.g.* if a cleric obtain a benefice through simony (*q.v.*) he has only a coloured title.

(3) *Putativus* is that title which arises when nothing is known about any certain title to possession, but one is prudently presumed to exist by lapse of time. This is sufficient for prescription (*q.v.*) : *e.g.* if a cleric be persuaded by the fact of possession that he has been collated to a benefice which as a matter of fact has not been given to him, he has a putative title.

3. A true title is not necessary for prescription, but according to the common opinion a coloured title is sufficient for that purpose.

4. A coloured title joined to a common error on the part of the people is sufficient for the purpose of exercising jurisdiction provided the error of fact or law be probable.

### TITLE FOR ORDERS

1. The S.C.P.F. issued 27 April, 1871, an Instruction on the title for ordination. It says :

‘ Since in every way it is unbecoming and quite beneath the dignity of clerics in holy orders to be compelled to procure the necessities of life by eleemosynary help or sordid gain, care, as everyone knows, has been taken from the earliest times that provision should be made for the decent and unfailing support of all who were to be raised to sacred orders in the Church of God.’

2. There are two kinds of title : the ecclesiastical and the patrimonial.

3. The ecclesiastical title has a twofold division.

(1) The title of benefice : that is, the permanent right of receiving the proceeds of the property of the Church by reason of some spiritual office constituted by ecclesiastical authority. This is the ordinary and chief title.

(2) The title of poverty. This belongs to religious profession by virtue of which those who have made their solemn vows in an approved religious order have all the necessities of life in common, whether these come from the property possessed by the order or from the alms of the faithful.

4. These two kinds of title have subsidiary and exceptional divisions.

(1) Common life. This title is granted by the Holy See to those clerics who, after the manner of religious, live together a life of discipline, but without vows, or with merely simple ones, and hence can leave or be dismissed the religious house and return to the world.

(2) The service of the Church. This title is sometimes allowed to those who, having no benefice, or pension, or patrimony, are yet ordained for the service of some church, and can be supported by such service and the pious offerings of Christ’s faithful, without at any time being removed or departing from such church unless some provision be otherwise made for them.

(3) Sufficiency and College are titles of rare occurrence.

## (4) The mission.

5. The patrimonial title holds good when the person to be ordained is possessed of property, other than coming from the Church, of such a sure and interest-bearing nature as to be deemed by the bishop sufficient for decent support : and to this kind of title belongs that of *pension* (*q.v.*), which must not only be sufficient for the cleric's proper maintenance, but be also permanent. These two titles must be regarded as exceptional and allowed, as it were, by dispensation should the bishop deem it necessary or convenient that one so circumstanced should be admitted to ordination.

6. As regards the title of the mission it is certain that ordinaries cannot confer sacred order by this title without a special indult from the Holy See, for it is a question of exceptional title which has come into vogue in opposition to the common law. This title is only to be made use of in favour of those who by their disposition and docility, their uprightness, talent, proficiency in sacred studies, morality, and contempt for the things of this world give promise of being earnest preachers of the Gospel. And in reference to this matter the burthen rests upon the consciences of superiors.

7. Those who are ordained on the title of the mission have to take the mission oath (*q.v.*). It is not essential that one should be actually on the mission, but it is sufficient, if he be ready to go on missions at the time and in the way his superiors may think fit.

8. If a title be lost and no other substituted in its place, the priest is not thereby suspended, but ordinaries are bound to insist upon those ordained obtaining some other title.

9. Ordinaries can employ upon the mission those who are ordained upon another title, and they cannot compel them to take the mission oath.

10. The S.C.P.F. exhorts in this Instruction ordinaries to introduce as far as possible other lawful titles for ordination besides that of the mission.

## TITULAR BISHOPS

1. Titular bishops are true bishops, and joined in spiritual matrimony with their church ; but as they have no subjects or revenue derived from their dioceses, they come under special laws.

2. Their promotion belongs solely to the Pope ; and although the other qualifications for the episcopal office are required, yet

the most worthy for the position has no rights over those merely worthy.

Sess. xxiii.  
c. 9, d. r.

3. Having no ordinary jurisdiction they can only lawfully exercise the powers of ordaining and confirming with the consent of the ordinary; and, acting without this consent, they incur the same penalties prescribed for bishops who ordain those who are not their subjects. The Council of Trent forbids them, without the leave of the ordinary, to give sacred orders to a familiar without any other title than that of three years' service, because the bishop, as such, cannot at once give the ordained the necessary benefice for his support.

4. A titular bishop cannot ordain or grant dimissorial letters to natives of his titular see, for he has no actual jurisdiction over them. Such natives if away from their own country either become subjects by baptism or domicile of the local bishop or are actually *ac privative* under the immediate or mediate care of the Apostolic See which provides for their wants.

5. He cannot, without the consent of the local ordinary, lawfully perform such acts as *iure ecclesiastico* are annexed to the episcopal order, e.g. consecrate churches, altars, or bless vestments &c. or grant indulgences.

6. Although he has an implicit approbation he cannot hear confessions even of his own household without the leave of the ordinary. This applies even to natives of his titular church.

7. Neither can he give approbation to priests to hear their confessions, nor can he validly assist at their marriages as *parochus* where the decree *Tametsi* is in force.

8. He cannot authenticate relics of canonised saints.

9. He can examine those whom he is to ordain with the leave of their ordinary; but there is no obligation so to do if they have been already examined by their own bishop, or if there be no doubt about their fitness.

10. They enjoy all the dignities which come from their spiritual matrimony with their churches, but not those which arise from actual jurisdiction. They cannot use, without leave of the ordinary, the *mozzetta* (regulars are not allowed to use this), but only the *mantelletta* over the rochet. Those who are also canons of a cathedral do not wear the canonical habit in choir, but the ordinary episcopal habit as used in Rome.

11. They cannot be elected to another church, but *postulation* (*q.v.*) is necessary, for only the Pope can dissolve the bond which exists.

12. They have at Rome equal rank with residential bishops, and usually take precedence according to the date of consecration.

13. They are subject immediately to the Holy See and *in se* exempt from the jurisdiction of the ordinary except in such matters as concern his own dignity and office. Their greater causes are reserved to the Pope, their lesser to the S.C.E.R.

14. They have the right of a private oratory, of the portable altar, of electing a confessor, who, however, has to be approved by the ordinary.

15. They are, as other bishops, obliged to be consecrated within three months after receiving their appointment, and they also must make the same profession of faith.

16. As they have no actual episcopal jurisdiction they are exempt from the law of residence (*q.v.*), and are not bound *ex iustitia* to apply their mass *pro populo*.

17. Hence they are not obliged on their promotion to vacate any benefice; they can also accept others.

18. They are not bound to the visit *ad limina*, nor to ask for nor to use the archiepiscopal pall should they have the corresponding title.

### TONSURE

1. The tonsure is a solemn ecclesiastical rite instituted by the Church. It consists in cutting the hair of the head by an authorised minister, who pronounces at the same time a form of words. It means that the baptized man who is being tonsured is transferred from the lay state into the clerical state, and has a share in the heritage of the Lord.

2. According to the Council of Trent the tonsure is not to be given to those who have not been confirmed.

Sess.  
xxiii.  
c. 4

3. The tonsure is not an order, for it gives no power of exercising any special act of the ministry: it is rather a disposition towards orders. The term *clericalis ordo* has reference to the clerical state.

4. The tonsure can be given at any hour and in any decent place. No age is prescribed in law save that the candidates must know how to read and write, and have learnt the rudiments of the faith. But the Tridentine decree on Seminaries (page 582) orders that boys of 'at least twelve years old' should wear the tonsure.

S.C.C.  
12 March,  
1718;  
27 April,  
1820;  
25 May,  
1895

5. The lawful giver of the tonsure is the bishop of the person to be tonsured. A man becomes subject to a bishop in five ways:

(1) By reason of origin: that is, by the domicile of the parents



at the time of birth. The mere fact of birth in any place does not make one a subject of the bishop of that place, but it is the true and stable dwelling of the parents that decides the place of origin.

(2) By reason of domicile (*q.v.*).

(3) By reason of benefice (*q.v.*).

(4) By reason of service.

(5) By reason of incardination.

6. A bishop cannot confer the tonsure outside of his own diocese except with the leave of the ordinary.

7. Abbats can give the tonsure to their own regular subjects.

8. The effects of receiving the tonsure are as follows :

(1) The tonsured person belongs to the ecclesiastical *forum*.

(2) He is capable of receiving orders.

(3) He can be presented to benefices.

(4) He can exercise ecclesiastical jurisdiction.

(5) He shares in all the clerical privileges of the *forum* and of the canon.

(6) He has a right to stand near the altar, within the rails, to minister and sing.

(7) He has the right to wear the clerical dress.

(8) He can be punished with ecclesiastical punishment.

9. The obligation of wearing the tonsure was enforced by the Fifth Lateran Council. While some authors liken the obligation to that of wearing the clerical dress, yet it seems that many others draw a distinction. In most Catholic countries the habitual use of the tonsure—that is, of the permanent sign of the initiation into the clerical state—is prescribed by positive law. But in English-speaking countries, from a custom arising in the days of persecution and having a prescription of over three hundred years, the shaving of the head, the priestly crown, seems, with the tacit consent of the Holy See, to have passed out of use. No provincial or national council has ordered it even when treating of the clerical dress ; and the Holy See has not inserted the law when correcting the decrees of those councils.

## TRACTATUS

1. The *Tractatus* is a public discussion held before an election wherein the qualifications of various candidates are examined, and the minds of the voters are enlightened as to the disposition of their votes in the scrutiny to follow.

2. The reasonableness of the *Tractatus* is apparent, and is

S.C.C.  
20 July,  
1898

deduced from the act of election itself. As the voter is obliged, often under oath, to vote only for the one he thinks in his conscience to be the best and most worthy, he is bound *ex iustitia* to take all the necessary means of forming his judgment. One of the principal of these means is to be found in the *Tractatus*.

3. Alexander III. in the Third Lateran Council (1179) decreed that inquiry must be made as to maturity of age, gravity of morals, and knowledge of letters. Under the head of gravity of morals come such questions as experience and prudence &c. These form the subject of the *Tractatus*.

4. The usual *modus operandi* is for the president of the meeting to receive by secret ballot the names of those to be proposed for discussion. In turn each person so proposed, if he be present, leaves the place of assembly, so that the discussion may be free and unhindered by his presence.

5. The *Tractatus* clears the ground for the following scrutiny, as the likely candidates are already known by its means.

6. It is held by canonists of weight that a preliminary *Tractatus* is essential to an election : for electors are bound *sub gravi* to investigate concerning the fitness of those to be elected, and they are also bound to elect the most worthy and the most useful to the Church.

*Cf. Trent,  
Sess.  
xxiv.  
c. 1, d. r.*

**TRANSLATION.** See BISHOPS, Article XIV.

### TRANSLATION OF THE SCRIPTURES

The Second Westminster Council decreed—

‘That an accurate version of the Holy Scriptures from the Latin xvi.  
Vulgate may be made as soon as possible. The bishops are of opinion that this undertaking should be entrusted to learned men, to be selected by his Eminence the Archbishop, care being taken, however, to observe the rules of the Index as to the revision of the work, and as to adding notes from the Holy Fathers and pious authors, and as to the permission and approbation for its perusal.’

### UNION OF BENEFICES

1. Union of benefices takes place in three ways :

(1) When out of two benefices there is made only one, so that neither is united to the other, but both are united together ; hence the resulting benefice retains the customs and favourable privileges of both churches. This union is called *extinctiva*.

(2) When two churches are so united that they do not form one body, but one is superior and the other is inferior and accessory, such a union is called *accessoria* or *subiectiva*. The church united accessorially takes the nature, customs, and privileges of the principal church.

(3) When neither church is subjected by the other, and the two do not form one body, but both retain their own title and rank, though ruled by one and the same rector, and remain two benefices altogether distinct, this kind of union is called *aeque principaliter facta*.

2. The Pope can unite any kind of benefices.

*Cf. Trent,*  
*Sess. xxi.*  
*c. 5;*  
*xxiv.*  
*c. 13*

3. The bishop can, for lawful causes, unite benefices and churches of his diocese.

4. The chapter *sede vacante* and the vicar capitular can also unite benefices and churches provided that they do not derogate from the episcopal jurisdiction. They cannot unite them to their own *mensa* (*q.v.*).

5. The vicar general cannot unite benefices unless he have a special deputation from the bishop.

6. For a lawful union by the bishop three conditions are required :

(1) A just cause : that is, the necessity or utility of the church.

(2) Citation of all interested parties, who can be obliged to give their consent if the union be necessary.

(3) The consent of the chapter : unless there be an immemorial custom to the contrary, or consent be refused without a reasonable cause.

7. If the union be made to the seminary the advice of the temporal commission for the seminary (*q.v.*) must be asked.

8. The rector of the benefice that is to be united need not be summoned, because the union will not have its effect until after his death or resignation ; hence no injury is done to him.

*Clem.*  
*lib. iii.*  
*tit. 4, c. 2*

9. The bishop cannot unite a parochial church to the chapter ; and Clement V., in the Council of Vienne, decreed that no church could be united to the episcopal *mensa*, even with the consent of the chapter. All such unions are null, any contrary custom notwithstanding.

## USE OF LATIN

1. The S.C.P.F. issued a letter to the bishops, 29 September, 1868, upon the use of Latin in letters to be sent to the Apostolic See. The cardinal prefect said :

‘It was an understood thing formerly that those who had to communicate with the Apostolic See in reference to ecclesiastical matters . . . or to ask for faculties should make use of the Latin, or at any rate of the native language. . . . This being the case I cannot do otherwise than earnestly beg of your lordship to be sure to insist even with the laity, and particularly with your own clergy, that whenever they send any petition or any decrees having reference to ecclesiastical business to this sacred council they shall be careful to make use, as far as possible, of the Latin or native language.’

The cardinal refers to the very serious evils which have befallen the Church through the neglect of Latin, and he exhorts the bishops to take care that its study is encouraged in their dioceses.

2. On 18 May, 1896, another instruction was issued by the S.C.P.F. referring to a letter of the Sacred Congregation dated 1 February, 1892, in which the use of Latin, or at least of Italian or French, was prescribed for letters sent to the Holy See. Notice was also directed to the necessity of using intelligible handwriting, care in making the names of persons and places quite clear; the use of white paper and black ink. The pagination must be that of a book, i.e. page 2 of the manuscript must be on the reverse of page 1. Lastly, every letter should be duly stamped.

3. Before the first letter was issued the First Provincial Council of Westminster had already decreed :

‘We particularly recommend the use of Latin in the study and § v teaching of theology, especially in maintaining scholastic disputes and public theses. For practice therein is of the highest importance for all ecclesiastics, particularly if they be promoted to any dignity or office, so as to enable them to draw up documents properly, and to write letters even with elegance in the Latin tongue. But in addition dogmatic definition is always more accurate, and the form of sound words more secure, if the memory retain them and they be quoted in discussion in the language in which they have been handed down to us by the Church and her most eminent theologians. An end must therefore, we think, be made of the neglect of this language of the Catholic Church, which may truly be styled the bond of orthodox unity and the medium of universal truth. Examinations in theology should, as far as possible, be held in Latin.’

## VAGABOND

1. A vagabond is one who has no domicile (*q.v.*), or even a quasi-domicile. Hence such are exempt from many laws which suppose a domicile.

2. Vagabonds are not obliged to make their Easter communion in the parish church where they happen to be, for they have no parish. Hence they can communicate anywhere.

S.C.O.  
Nov. 1676

3. As regards matrimony the necessary *parochus* is he in whose parish the vagabond actually is at the time of marriage. The same can be said of soldiers; but in an actual expedition they can contract before the military chaplain. The Holy Office issued an Instruction, 21 August, 1670, concerning the marriage of vagabonds, and declared that the marriage was not to be allowed unless there was proof by the legal testimony of their ordinaries that they were free to marry. The document must be signed, sealed and recognised by those who know the signature and seal, and the persons must be identified. This Instruction concerns the lawfulness of the marriage, not its validity.

4. As regards the punishment of crimes and all judicial business, the putative domicile for such purposes is the place where either the crime was committed or the vagabond is actually.

## VIATICUM

*De Synodo,*  
lib. vii.  
c. 2, n. 2

1. Benedict XIV. says that the obligation of receiving the Blessed Sacrament when in danger of death is *divini iuris*, according to the common opinion of doctors. Therefore a *parochus* (*q.v.*) is bound to take It to the sick *per modum Viatici*. The Holy Office (10 April, 1861) declared that those condemned to death, even if neophytes, so long as they can discern the Body of the Lord, are to be helped with this divine food. Children also in danger of death, even if they have not reached the usual age, are to receive the Viaticum if they believe firmly and reverently adore Christ hidden beneath the sacramental species.

Benedict  
XIV.  
*op. cit.*  
c. 12, n. 2

2. Not only once in the same illness, but several times can the Viaticum be taken to the sick person if he desire it.

3. Viaticum and Extreme Unction can be given to a sick person who may live many months, yet may die within the year, if it be foreseen that the missionary will be far away and unable to attend when the urgent necessity of receiving them arises.

4. An Encyclical letter of the S.C.P.F. 25 February, 1859, gives directions concerning carrying the Most Holy to the sick in missionary countries. It reprobates as an abuse the practice of priests carrying about the Blessed Sacrament with them all day, in case that some one might require It, and prescribes that due reverence be observed. *Collectanea*, n. 733

5. The first Council of Westminster decreed :

‘Although on account of the state of things around us the Most Holy Viaticum cannot, without danger of sacrilege and scandal, be taken to the sick publicly and solemnly, and consequently the Holy See has allowed us to carry it without a light and secretly ; nevertheless no priest should forget that he has his hidden God adhering to him, and is bearing Him with him for the solace of His people. Reverently, therefore, nay, devoutly, and as if fixed in contemplation, he should convey to the home of the sick the most holy Sacrament, having It suspended from his neck in a bag becomingly or richly adorned. And as the dwellings of the poor are often most wretched, so much so that the sacred Viaticum can scarcely be administered in them with decency, we declare it to be a commendable practice, and recommend it for general adoption, that the priest carry with him, or send on beforehand, a small case furnished with all things requisite for the decent administration of the Blessed Sacrament. As soon as possible after the communion of the sick the pyx must be brought back to the church and placed in the tabernacle till it be purified.’ xviii. 12

### VICAR APOSTOLIC

1. There are two kinds of vicars apostolic :

(1) One sent to rule a diocese *sede plena* or *sede vacante*. He is an administrator (*q.v.*).

(2) One who is sent into regions not yet divided into dioceses, or where an ordinary bishop cannot be sent. It is in this sense that the term is generally used.

2. The power of a vicar apostolic depends entirely upon the delegation of the Pope. He has only so much jurisdiction as it pleases the Holy See to grant him.

3. It seems to be according to the mind of the Holy See that vicars apostolic are not ordinaries, but exercise the powers of ordinaries by delegation.

4. But as they are true pastors and the superiors of the clergy and people submitted to them, it follows that they enjoy all those S.C.P.F.  
14 Feb.  
1702

faculties which are necessary for ruling their vicariate in either *forum*, and that they have the power of making laws, with judicial and coercive power over their subjects, and administrative power over property. No metropolitan (*q.v.*) or primate (*q.v.*) can in any way meddle with their vicariates.

S.C.P.F.  
27 Nov.  
1858

5. But as they are not diocesan bishops they have no cathedral or chapter, and they cannot give the capitular *insignia* to their missionaries.

6. Moreover they do not have the extraordinary faculties which are granted to bishops *a iure* and by name in the Council of Trent.

7. They cannot appoint vicars general (*q.v.*); but they can have assistants to whom they can grant what faculties they wish.

8. They can and ought to require to see from all regulars, even from the Jesuits, the letters patent or other documents concerning their mission, constitution, and deputation; and in case of refusal they, as delegates apostolic, can inhibit them from using the faculties granted in these letters. Regulars are bound to ask the leave of the vicars apostolic before exercising their faculties; and these are not to be refused except for a grave cause, which has to be communicated to the S.C.P.F.

9. A vicar apostolic can compel the regulars of his district to undertake the cure of souls if there be a dearth of secular priests; and regulars so employed are, as far as the cure and parochial functions, under his visitation and correction. They cannot build and open churches against his will in places where other missionaries have churches.

10. As delegate of the Holy See he can decide disputes among religious, but must refer the graver causes to the Sacred Congregation.

11. The Leonine Constitution *Romanos Pontifices* is extended to all missionary countries in which regulars (*q.v.*) labour as missionaries.

12. Every vicar apostolic is bound to appoint a vicar who, at the death of the vicar apostolic, shall take over the ruling of the district as delegate of the Holy See, and so continue until due provision be made. The delegate enjoys all the faculties of the late vicar except those depending on the power of order.

## VICAR CAPITULAR

1. A vicar capitular is one appointed by the chapter (*q.v.*) to exercise in their name the jurisdiction that falls to them *sede vacante* (*q.v.*).

2. The vicar capitular is elected by the chapter. The election must take place within eight days of the certain knowledge of the vacancy of the see. If the chapter neglect to do this, then unless there be fraud, the election passes *de iure* to the metropolitan; and if the vacancy occur in the metropolitan church the election, under similar circumstances, passes to the senior suffragan.

3. The Council of Trent decrees :

‘The chapter shall also be bound absolutely within eight days after the decease of the bishop to appoint an official or vicar, or to confirm the one who fills that office. He shall be at least a doctor or a licentiate of canon law, or otherwise as competent a person as can be found. If anything be done contrary hereto the appointment aforesaid shall devolve upon the metropolitan.’

Sess. xxiv.  
c. 16, d. r.

4. Chapters also elect a vicar capitular when their bishop has been translated.

5. Before the election of the vicar capitular the jurisdiction passes *in solidum* to the chapter, and can be exercised by them *capitulariter*. But once elected the whole of the ordinary episcopal jurisdiction and that delegated *a iure* passes *privative* and irrevocably to the vicar capitular. Hence the chapter cannot depose the vicar capitular; nor can they limit his jurisdiction either as to time or to causes. The election, or rather constitution or deputation, is to take place in the accustomed manner of elections (*q.v.*), and generally by secret voting. Otherwise it is null. It must be by an absolute majority which is to be considered relatively to the whole chapter and also to those present.

Pius IX.  
Constit.  
*Romanus*  
*Pontifex*,  
1875

6. The following are the requisites for a vicar capitular :

(1) He should have the necessary learning. According to the Council of Trent he should be at least a doctor or licentiate<sup>1</sup> in law. A merely honorary title is not sufficient. Hence it follows that the election of one who is not a doctor of canon law is null when there is such a one in the chapter.

(2) He should be a member of the chapter if *in gremio* there be a doctor or licentiate in canon law and fit for the office. If there

<sup>1</sup> The term ‘licentiate’ refers to the last grade in the faculty of law given in certain countries, as in Spain: it is of the same value as the doctorate in Italy.



be not such, one who does not belong to the chapter can be appointed provided he have the necessary qualifications. If the vicar capitular be not a doctor in canon law, he should have a skilled assessor, who is to be appointed by the vicar himself. The chapter, however, can advise the vicar to take an assessor, who may be a layman so long as he has the learning necessary.

(3) He should be at least tonsured and be distinguished by learning, prudence, and probity.

(4) He should be of mature age, *i.e.* as a rule forty years of age if he be to deal with causes of heresy.

(5) He should be capable of fulfilling his office, *i.e.* not suspended, excommunicated, married, illegitimate, or infamous. Regulars, especially mendicants, the canon penitentiary, parish priests if with a rural cure, are excluded from office on account of presumed incompatibility.

7. The vicar capitular has a right to a fit salary.

8. The vicar capitular has jurisdiction in all those things which are of ordinary episcopal jurisdiction, but not in matters which are *de iure delegato* or *de iure speciali*. Hence he can :

(1) Hold the *concursus* (*q.v.*).

(2) Institute those presented by patrons.

(3) Visit the diocese a year after the last visitation.

(4) Convoke the synod a year after the last one was held.

(5) He can grant dismissorials *ratione arctatis* ; and, where the decree of the Council of Trent is not in force, he can grant them.

(6) He can expedite what was granted by the bishop when dying.

(7) He can dispense from interstices.

(8) He can absolve from censures and dispense from irregularity.

(9) He can appoint vicars to vacant parishes.

(10) He can take cognisance of matrimonial causes.

(11) He can bestow such benefices as fall by devolution to the bishop.

(12) He can authorise exchanges of benefices.

(13) He can give licence for building churches whereby the rights of patronage (*q.v.*) are acquired.

(14) He can suspend, excommunicate, interdict, deprive, and absolve.

(15) He can make statutes which bind until they be revoked.

(16) He can approve of confessors and give them faculties.

(17) He can visit non-exempt nuns, and even exempt ones.

S.C.C.  
15 Oct.  
1601

when the bishop had perpetual faculties as delegate of the Apostolic See.

(18) The metropolitan vicar capitular can receive appeals from the suffragan courts.

9. On the other hand a vicar capitular cannot—

(1) Give benefices which have fallen vacant before or during the vacancy of the see except the collation belongs simultaneously to the bishop and the chapter.

(2) He cannot alienate the goods or the rights of the cathedral, or transfer the episcopal *mensa* (*q.v.*) to the chapter, or make innovations to the prejudice of the bishop.

(3) He cannot begin suits concerning Church property.

(4) He cannot excommunicate priests.

(5) He cannot erect confraternities nor approve of their statutes. S.C.I.

(6) He cannot grant indulgences. 13 Nov. 1878

10. The vicar capitular, as well as the chapter, ought to appoint, according to the Council of Trent, one or two *oeconomi* from the chapter to take charge of the temporalities of the cathedral church during the vacancy of the see.

11. The vicar capitular has precedence over all the chapter except the first dignitary; and he has the place in choir and processions at the left of the dignitary; or if this one be carrying the Blessed Sacrament, his place is on the left of the senior canon representing the chapter. S.C.R. 12 June, 1638; 16 March, 1658

12. A vicar capitular during his time of office is a titular protopnotary, and has the right to the prelatical dress, viz. a black cassock with a train, which, however, cannot be extended; a silk cincture with two *flocculi*, rochet, mantelletta, and berretta. He also has the rights of *bugia* in mass and vespers. Pius X. *Motu proprio*, 21 Feb. 1905

13. The vicar capitular ceases his office in several ways :

(1) By the cessation of the vacancy in the normal course when the new bishop takes possession of his see.

(2) By the appointment of an administrator or vicar apostolic.

(3) By remotion by the Holy See.

(4) By resignation made in writing and lawfully accepted by the chapter, which then has to elect another within eight days.

(5) By incurring censure.

(6) By death; then the chapter within eight days appoints another.

14. The vicar capitular has to give an account of his administration to the new bishop.

15. The First Westminster Council decreed :

xii. 1

(1) 'On the death, therefore, of a bishop the canons shall meet together, after the funeral ceremony has been duly performed, and under the presidency of the provost they shall go through everything prescribed by law for the election of a vicar capitular; and this should be done within eight days.

Capitular  
Statutes,  
12

(2) 'Episcopal ceremonial functions do not fall to the vicar capitular, but to the chief dignitary of the chapter (*q.v.*).

n. 42

(3) 'On the death of the bishop all the canons should meet together to assist with due respect at the funeral, and within eight days from the bishop's death the chapter shall by a free election appoint its vicar with power to govern the diocese in accordance with canon law. And he, once appointed, cannot be set aside by the chapter, nor have anyone associated with him in his office.'

## VICAR GENERAL

1. In the Fourth Lateran Council leave was given to bishops to choose in place of archdeacons (*q.v.*) persons to whom they might at will grant a certain amount of their ordinary jurisdiction which, also at will, might be taken away from them. These persons were called vicars general, procurators general, or officials.

2. A vicar general, then, is 'a person lawfully deputed to exercise in place of the bishop, and in the same place where he has his see, the episcopal jurisdiction in general in such a manner that his acts may seem to be done by the bishop himself.' He must be appointed to exercise the episcopal jurisdiction *quoad eius universalitatem*; otherwise he is no real vicar general: that is, generally speaking; for the bishop can make exceptions for certain causes and certain places.

3. The appointment of the vicar general is entirely in the hands of the bishop, and he need obtain neither the consent nor the advice of the chapter. Formerly the consent was required, but now a contrary custom prevails.

S.C.C.  
11 Feb.  
1696

4. Ordinarily speaking, a bishop is obliged to appoint a vicar general; but if he wish to preside in his court himself, and he be skilled in the law and be capable of conducting these causes, he cannot be compelled to appoint one, especially if the diocese be small.

S.C.E.R.  
6 Sept.  
1748

5. The bishop can, with the leave of the Holy See, appoint one or two vicars to act separately. But the Council of Trent

speaks only of one. The S.C.E.R. (24 September, 1827) reprobated the custom of appointing several vicars general to act *collegialiter*. If two are appointed they should both live in the episcopal city.

6. The bishop cannot appoint a vicar general before he has taken possession of the diocese.

7. The requisites for a vicar general are as follows :

(1) He must be a cleric, at least tonsured and twenty-five years of age.

(2) He must not be a married cleric.

S.C.E.R.  
11 Sept.  
1612

(3) He must not be a regular unless with apostolic leave.

(4) He should not be a *parochus* or one with cure of souls, especially if his cure be outside the city ; for, generally speaking, the two offices are held to be incompatible.

S.C.E.R.  
15 Jan.  
1597  
S.E.C. 12  
May, 1629

(5) He should not be the nephew of the bishop, nor his brother, nor any blood relation, unless leave be given from the Holy See for a just cause.

S.C.E.R.  
19 Jan.  
1603  
S.C.E.  
19 Sept.  
1577

(6) He should not be by origin belonging to the diocese ; otherwise he might for friendship's sake and other reasons deviate from strict justice and become suspect to the parties brought before his tribunal. This prohibition to choose as a vicar general a native of the diocese has been frequently renewed ; and it was again laid down by Benedict XIII., 1725, in the Council of Rome. If the Holy See for just causes allow a bishop to appoint one of the diocesan clerics as his vicar, this one should not be called vicar general, but pro-vicar-general.<sup>1</sup>

S.C.E.R.  
29 July,  
1587  
S.C.P.F.  
14 Dec.  
1875 ; and  
Sebastianelli,  
vol. i.  
p. 286

(7) He should be a doctor or licentiate in canon law, or some one otherwise fit. When the question is raised before the Holy See, bishops are instructed to appoint a doctor to the office, although sometimes it is allowed that one without an academic degree is tolerated provided that an assessor skilled in the law be given to him. The reason for insisting that the vicar general should be a doctor in canon law is plain. He is the ordinary judge of the bishop's court, and if the bishop himself be not a canonist, the vicar general can supply this most important deficiency.

(*Cf.* Trent,  
Sess. xxiv.  
c. 16, *d. r.* ;  
and  
S.C.E.R.  
28 Aug.  
1582

<sup>1</sup> The vicar general is not the go-between of the clergy and the bishop ; that is the office of the *procurator cleri* (*q.v.*). The vicar general is the *alter ego* of the bishop ; and as it is not necessary, and often not wise at all, that the bishop should be made from the diocesan clergy, so the same reason obtains in the appointment of the vicar general. The Holy See has always decided in the sense of having the vicar general from another diocese, and the practice of St. Charles at Milan is a proof of the mind of the Church in this matter.

8. The power of the vicar-general has something of the nature of ordinary jurisdiction, since from the very fact of his appointment he acquires an ordinary power of administering the diocese. This power is said to proceed from the general mandate, which is nothing else than a deputing a person to fulfil the duty of a vicar general. Hence by the power of the general mandate the vicar general can do all that business which the bishop can do, save what is expressly excepted *a iure* or is of so grave a nature that it is to be presumed that the bishop would be unwilling that it should be done without his knowledge and judgment. The 81 *Regula Iuris* says : *In generali concessione non veniunt ea quae quis non esset verisimiliter in specie concessurus.*

9. The vicar general cannot, by his general mandate, do the following :

(1) He cannot take judicial cognisance of criminal matters, nor inflict the penalties of privation from benefice, office, or administration. But he can inquire into criminal matters, and can make use of the lighter means of threats or smaller punishments to deter a criminal or to ward off scandal ; for ordinary jurisdiction requires for its efficacy at least the power of moderate punishment.

(2) He cannot take juridical cognisance of matrimonial causes ; but he can dispense with the banns.

(3) He cannot erect or confer benefices, nor can he unite or suppress them. Also he cannot accept resignation. But the vicar general can institute clerics presented by patrons ; for institution (*q.v.*) is in law an act of necessity and of justice. He cannot reserve the rights of patronage to anyone. He cannot set pensions (*q.v.*) on benefices nor appoint a coadjutor to a rector, or an *oeconomus* to a church.

(4) He cannot grant letters dimissorial except the bishop be abroad ; but he probably can grant letters testimonial.

(5) He cannot convoke the synod or visit the diocese.

(6) He cannot dispense with irregularities arising from an occult crime, nor with vows nor episcopal laws, for all these have the nature of remissions and favours. Should, however, *sciente et tacente episcopo* a contrary custom be introduced, it is held to be included in the general mandate. But the case of absolution from heresy is specially reserved by the Council of Trent.

(7) He cannot give the canonical consent to the erection of confraternities in the diocese. The S.C. of Indulgences (2 August,

Sess.  
xxiv.  
c. 6, d. r.

1888) has specially declared this as regards the Confraternity of the Rosary.

(8) He cannot take part in alienations, neither can he grant licences for the building of new monasteries or convents.

(9) He cannot absolve from cases reserved to the bishop.

(10) He cannot proceed in cases in which the bishop acts as delegate of the Apostolic See.

(11) He cannot examine a postulant before receiving the habit or a novice before profession.

(12) He cannot take cognisance of restitution *in integrum* (q.v.).

(13) He cannot authenticate a copy of an instrument so as to give it the force of an original.

(14) He cannot, during the absence of the bishop, interfere with the chapter's rights in the cathedral; nor can he, in the absence of the bishop, intervene officially in the chapter.

(15) If a canon, he cannot be present at the deliberations of the chapter when they are about to discuss matters concerning the bishop or himself.

10. The vicar general may have special mandates of two kinds : S.C.E.R.

(1) One given for transacting a special business.

17 Jan.  
1884

(2) The other given in writing over and above the general mandates as special faculties. These, of course, depend entirely upon the bishop. Hence the bishop can reserve to himself certain points which come under the general mandate; but this has to be done with moderation lest the vicar general's power become inane and illusory. Hence the special mandate should be so conceived as not to destroy the general one.

11. As the vicar general has, by mandate, one and the same tribunal as the bishop, certain results are :

(1) While the vicar cannot commit his whole office to another, he can delegate part of what he has by the general mandate.

(2) There is no appeal from the sentence of a vicar general to the bishop; the appeal lies directly to the metropolitan.

(3) The vicar general's jurisdiction ceases with that of the bishop.

(4) The mandate can be at any time revoked. But this revocation can only be validly done :

a. For a reasonable cause, otherwise the vicar general would be injured and a *gravamen* created, and obligatory restoration would follow. S.C.E.R.  
3 July.  
1610; and  
8 Oct.  
1649

b. With direct intimation to the vicar himself.

(5) Hence also the vicar can expressly or tacitly resign his office ; and it is not necessary that this resignation be accepted by the bishop.

Benedict  
XIV.  
Constit.  
*Cum a  
nobis*

12. As regards precedence, even in the presence of the bishop, the vicar general has, in private and in public, precedence in all acts over all others in the diocese ; for he is the superior and, after the bishop, has jurisdiction over all. He has precedence over the chapter when they are in their ordinary canonical dress or in prelatical attire ; but he does not precede those canons who are in the sacred vestments. But the vicar general to enjoy this precedence in choir and in procession must be in the dress appropriate to the vicar general : that is, the cassock and mantle ; if he wear the capitular dress he takes the stall assigned to him on his reception into the chapter. If he wish to share in the distributions (*q.v.*) he must sit in choir as a canon. The episcopal functions, in the absence of the bishop, do not belong to him, but to the first dignity of the chapter. The vicar general of the metropolitan see takes precedence of the suffragan bishops in provincial synods.

Pius X.  
*Motu pro-  
prio*, 21  
Feb. 1905

13. A vicar general during his office is a titular protonotary, and can wear in choir a black cassock with a train, which must, however, never be let down ; a silk cincture with two *flocculi*, rochet, black mantelletta, and berretta ; and *extra urbem*, at mass and vespers, he can use the *bugia*, but no other of the pontifical rights.

14. The First Westminster Synod decreed :

xiv. 1

(1) ' It is meet that in every diocese a vicar general should be appointed, and that such faculties as the bishop shall think proper shall be given to him in writing, so that, when the bishop be absent or hindered, the vicar general may be able to attend to the ecclesiastical business of the diocese and assist the bishop in the government of the Church.

xxv. n. 1

(2) ' Whoever is set over a congregation should make a profession of faith before the bishop or his vicar.

x. n. 2

(3) ' When the bishop has determined to take the opinion of the commission of investigation in reference to the deprivation of a missionary (*or other*) rector, he should entrust his vicar general . . . with the task of committing to writing an account of his reasons for proceeding to the deprivation, together with the result of any preceding inquiry and a record of any circumstances which may have special reference to the case or to the conduct thereof.'

VICARS. *See* COADJUTORS

VICARS FORAN. *See* RURAL DEAN

## VISITATION

1. Visitation is nothing else than holding an inquiry concerning excesses and defects, castigating what is found to need castigation and emending with convenient remedies what needs emendation. The object, therefore, is to preserve the observance of obligations, to take note of the needs of every person and place, and, where dangerous relaxation has taken place, to restore things to their pristine vigour and life. Hence visitation is a duty which is incumbent on all set in authority and responsible for the souls of others.

2. The Sacred Council of Trent says :

‘Patriarchs, primates, metropolitans, and bishops shall not fail to visit their respective dioceses, either personally or, if they be lawfully hindered, by their vicar general or visitor; if they be not able, on account of its extent, to make the visitation of the whole annually, they shall visit at least the greater part thereof, so that the whole shall be completed within two years, either by themselves or by their visitors. . . . But archdeacons, deans, and other inferiors, who have been hitherto accustomed lawfully to exercise jurisdiction in certain churches, shall henceforth visit those same places, but by themselves only, with the consent of the bishop and assisted by a notary. . . .

‘But the principal object of all these visitations shall be to lead [*men*] to sound and orthodox doctrine by banishing heresies, to maintain good morals, and to correct such as are evil; to animate the people, by exhortation and admonition, to religion, peacefulness, and innocence, and to establish such other things as shall seem to the prudence of the visitors [*to be*] for the profit of the faithful according as time, place, and opportunity shall allow. . . .

‘As regards patrons, they shall not presume in any way to interfere in those things which regard the administration of the sacraments; neither shall they meddle with the visitation of the ornaments of the church nor the revenues arising from landed

Sess. xxiv.  
c. 3, d. 7.



property or from buildings, excepting so far as they are competent to do this by the institution or foundation; but the bishops themselves shall attend to those things, and shall take care that the revenues of those buildings be expended upon purposes necessary and useful for the church as to them shall seem most expedient.'

3. The rights of visitation belong to all prelates that have ordinary jurisdiction over some person. Hence the Pope, by his legates and nuncios, can institute an apostolic visitation in any part of the world; patriarchs, primates, metropolitans, and bishops in their respective jurisdictions.

4. The vicar capitular (*q.v.*) can also visit the diocese.

Trent,  
*ibid.*

5. Archdeacons can do so with the consent of the bishop; and they are bound 'to give the bishop an account, within a month, of the visitation that has been made, and to show him the depositions of witnesses and the proceedings in their entire form, any custom, even though immemorial, and any exemptions and privileges whatsoever notwithstanding.'

6. The vicar general can only hold a visitation by special commission.

7. Metropolitans can only visit the dioceses of their suffragans for a cause known and approved by the provincial council or by the Holy See.

Benedict  
XIV. *De*  
*Synodo*,  
lib. x.  
c. 10, n. 6

8. A bishop can visit, as many times as he likes, not only the churches and benefices of the diocese, but also the cathedral and the chapter. But he can only accept procurations (*q.v.*) once a year from each place visited.

S.C.C.  
14 Dec.  
1654

9. The visitation should be carried through with all convenient despatch, and during the time the visitor should not turn aside to other acts.

10. It is clear from the Council of Trent that it is in the mind of the Church that every diocese should be visited each year; and if the distances be too great at least every two years.

11. The obligation is a personal one upon the pastor, and it is only if he be lawfully hindered that he can use either his vicar general or another specially appointed as visitor. The visitor should be provided with letters patent, which should be read in every place before the visitation is begun.

12. The edict of visitation fixing the day should be duly published in each place, so that the people and clergy may have full notice. The visitor should not come unexpectedly, unless sometimes a just cause or prudence should so require.

13. The precise time of visitation is not determined by law, but, with the order of the churches to be visited, is left to the will of the visitor.

14. Two co-visitors should be in attendance, and they should be men skilled in ecclesiastical affairs. Though the appointment of these is not of obligation, yet it is very useful for securing the good end in view.

15. If carefully drawn-up articles of visitation were drawn up and forwarded some time before the day fixed for the visitation it could be seen from the replies what particular subjects required a personal investigation. Two copies of the replies should be made, one to be kept in the local archives and one in the diocesan. The articles of visitation should be adapted to the needs of the time, circumstances, and the nature of the particular visitation itself.

See forms  
in Mona-  
celli, vol. i.

16. The diocesan visitation is of three kinds :

(1) The visitation of places, comprising all the buildings and the parish generally.

(2) The visitation of persons. This includes the clergy, the laity, and nuns &c.

(3) The visitation of things. In this, inquiry is made as to the sacraments and divine worship, all spiritual and temporal things concerning the place.

17. From the decrees made by the bishop in visitation concerning the divine worship, the cure of souls, the administration of the sacraments, the correction of morals—in all these there is no appeal to the Holy See *in suspensivo*, but only *in devolutivo*.

18. The advantage of the archidiaconal visitation would seem to be that this, following a year after the episcopal visitation, can be directed chiefly to see that the decrees are carried into practice.

19. The Councils of Westminster decreed :

(1) 'Mention was made above of the accurate knowledge that a priest should acquire of the flock committed to him. With much more force does this apply to bishops, for they, like watchmen placed on the walls of Jerusalem, must keep an unwearied look-out upon every side. They should, therefore, obtain an exact account of every portion of their diocese so that they may become acquainted with it thoroughly.

(2) 'But this should not satisfy them without going through the whole of it themselves. And this could be easily done if each

bishop were to divide his diocese into three parts and take one part each year. Then, in the space of three years, he would examine into the whole of it and give the sacrament of Confirmation in every church in it.

1 West.  
xxix. 1-3

(3) 'Yet it is of the greatest importance that he should not omit the regular episcopal visitation. Now this visitation must not be made anyhow, nor according to any old custom; but as far as possible in the way set down in the Roman Pontifical. The bishop must go through and inspect the church, the clergy-house, the schools, and the cemetery, and carefully examine their surroundings and contents: to wit, the church furniture, altars, tabernacle, and whatever else pertains to the divine worship or to the administration of the sacraments. And if he perceive that there be need of any improvement he must issue his decree to this effect, and take care that his vicar general or the rural dean see that they are carried out.

*Ibid.*  
xxviii. 1

(4) 'Missionary and public churches served by regulars are subject to the bishop's visitation. For by him, according to the holy Synod of Trent, "it is proper that all that pertains to the divine worship in the diocese should be carefully attended to and provision for wants made." The bishop, therefore, must keep an eye to these, just as he does to churches served by secular priests, as regards all matters that concern the divine worship, the administration of the sacraments, preaching the Word of God, and the care of souls generally; yet so as not to prohibit any rites in the celebration of mass, lawfully approved of, for the order attached to any church or the observance of their own calendar.

IV. West.  
xiv.

(5) 'Since the duty of visitation is so intimately connected with the pastoral office that by the law of the sacred canons and the decrees of Councils it cannot and must not be overlooked, it was justly determined in the First Synod of Westminster that bishops should not fail to make their episcopal visitation at stated times. And in this visitation they are first of all to find out whether all the decrees made at provincial synods in reference to the mode of life and good name of the clergy, the administration of the sacraments, and the care of the flock, as well as to the material state of churches and ecclesiastical property, are observed to the very letter. . . . In order, therefore, that this visitation may be the more easily and successfully carried out, and that everything to be done in it may be the more sure of being managed with mutual goodwill and for the common welfare of the Church of God,

we consider that a plan should be laid down upon the lines of our former synods and the prescriptions of the Holy See and ratified at this synod.'

### VOTUM

1. *Votum* has three meanings : a vote in any election, an opinion given by an expert on a point submitted to him, and a promise made to God. It is only in this last sense that the *votum* is here considered.

2. A *votum*, or vow, is a deliberate and voluntary promise made to God *de meliori bono*.

3. It is a promise, therefore, not a simple proposal. It implies a well-weighed and firm obligation of fidelity, and it is made to God as an act of worship.

4. The deliberation needed is that which includes advertence to and knowledge of the subject.

5. The voluntariness is that which excludes error or *dolus* concerning the substance of the thing promised.

6. The last requisite is that the matter of the vow must be, not only good in itself, but better than its opposite.

7. Vows are divided in various ways :

(1) Simple vows are made without solemnity and consist in a bare and simple promise made to God. They may be made privately, by word of mouth or in heart also. Simple vows are also those now taken for a limited period in all orders, both male and female, before solemn profession is allowed.

(2) Solemn vows are made by full profession in an order approved by the Church ; and also, substantially, by receiving holy orders. These vows, depending on the institution of the Church, have to be accepted by due authority.

8. Another division of vows is :

(1) Real vows, concerning one's own property, *e.g.* as in the case of alms.

(2) Personal vows, concerning an act or its omission, *e.g.* as in the case of fasting.

(3) Mixed vows, partaking of the nature of both the real and the personal, *e.g.* in the case of visiting a holy place and of offering alms there.

9. Other divisions to be met with are :

(1) Temporal or perpetual vows.

(2) Express or tacit vows.

(3) Absolute or conditional or penal vows.

10. The matter of a vow should be something of one's very own. Hence a vow regarding the disposal of what is not ours is invalid. For example, a parent cannot make a valid vow that a child should enter an order or become a priest. When a community vows anything, only the first vowers are bound, and their successors are free unless they ratify the deed.

11. A personal vow only obliges precisely the person who makes it, not his heirs; but a real vow passes on to them, if the testator leave sufficient means, the fulfilment is not beyond the powers of the heirs, and the vower has neglected to keep his promise.

12. Vows cease to bind :

(1) By extinction, whether it be of the final cause, the non-fulfilment of a condition, supervening impossibility, a notable change beyond the intention of the maker, lapse of a fixed time, or profession; except if these affect a third party.

(2) By irritation, which is direct, by one having power over the person who makes the vow; or indirect, by one with power over the matter of the vow.

(3) By dispensation (*q.v.*).

(4) By commutation.

13. Irritation and dispensation differ in this :

(1) Irritation takes away the obligation *per potestatem dominativam*; dispensation acts *per potestatem iurisdictionis*.

(2) Irritation can be induced by lay people; dispensation can be granted only by a cleric.

(3) Irritation without a just cause is unlawful but valid; dispensation without a just cause is both unlawful and invalid.

➤ 14. Irritation and dispensation differ from commutation; for while those take away the obligation, this leaves it existing, but changes the matter.

15. The Pope cannot directly irritate the vows of Christians, nor those of secular clerics; but he can irritate those of religious. Indirectly, however, he can irritate all vows, in so far as he can impede the execution of any vow which may be prejudicial to the Church.

16. Bishops and other prelates can also indirectly irritate the vows of their subjects in so far as the matter may prejudice their rule, government, and administration.

17. Dispensations without a just cause are rather to be called dissolutions than dispensations. The principal just causes are :

(1) Imperfect deliberation.

(2) Spiritual or temporal loss arising from observing the vow.

(3) Notable and great difficulty in observance especially if supervening or unforeseen.

(4) The common good.

18. The Pope for a just cause can dispense every vow.

19. The bishop can dispense by his ordinary power all the vows of his subjects excepting those specially reserved to the Holy See.

20. Legates and nuncios and all prelates with jurisdiction in the external *forum* can dispense the vows of those subject to them.

21. A metropolitan, being the ordinary of his suffragans, can dispense their vows; but he has only power over the vows of their subjects when they appeal against the sentence of their bishop who unjustly refuses to dispense.

22. Regular prelates can dispense the vows of their subjects, even of their novices.

23. Abbesses and superiors of nuns cannot dispense the vows of their religious, but they can irritate them.

24. Regular confessors can dispense all vows which the bishop can dispense by his ordinary power. This faculty is generally also given to the secular clergy.

25. The five vows reserved to the Pope are :

(1) Entering religion in an approved order.

(2) Entire and perpetual chastity.

(3) Pilgrimage to Jerusalem.

(4) Pilgrimage to Rome.

(5) Pilgrimage to Compostella.

26. As this reservation is *odiosa* it has to be strictly interpreted, *e.g.* the vow must be made to God, not to the Blessed Virgin.

27. Commutation may be made in several ways :

(1) By change into some better work. This can be done by one's own authority and without any cause except with reserved vows and those made in favour of and accepted by a third party.

(2) By change into something equally or less good. This can only be done by the authority of the Pope or of one having the necessary jurisdiction. This kind of commutation requires a grave cause, especially if it be into something notably less.

28. As a rule, in commutations equity and proportion have to be observed. Hence a personal vow should be commuted into another personal one, a real into a real, a mixed into a mixed, a perpetual into a perpetual one.

T T

29. Those who can dispense, either *iure ordinario* or *delegato*, can commute.

30. The former is generally given to simple confessors by virtue of the Propaganda faculties (*q.v.*).

### WITNESS

1. A witness is necessary in many ecclesiastical acts, either to testify to the signature of a deed or to the truth of an assertion.

2. In trials witnesses are used to prove a fact, either directly or indirectly, by establishing the falsity of a contrary assertion. Hence they are a part of judicial proof, and may be defined as persons worthy of belief lawfully cited to testify in court or before the judge holding court on facts or questions in dispute.

3. Anyone not expressly prohibited by law can act as a witness.

4. The law of nature forbids the witness of lunatics or infants. The canon law sets aside :

- (1) Those who are under fourteen.
- (2) As a rule, the blind, deaf, or dumb.
- (3) Those who have been bribed or hired to give witness.
- (4) The infamous *iuris* or *facti*.
- (5) Those under judicial investigation for their own crimes.
- (6) Those who are suspected and proved by the opposing party to be guilty of a grievous offence.
- (7) Those convicted of perjury.
- (8) Those under excommunication. The *tolerati* can be admitted if not opposed.

(9) Parents cannot testify, as a rule, for or against their children, nor relations in favour of one another, nor advocates or procurators in favour of their clients; accomplices cannot testify against each other except where the crime necessarily supposes accomplices; enemies against each other; Jews or heretics are not received against Christians, nor laics against clerics, except in certain well-defined cases; minors under twenty cannot testify in criminal causes.

5. No one can be a witness in his own cause. Hence those who have a cause similar to that in which they are to testify are thereby excluded; also a judge in a cause which he adjudicates or has adjudicated.

6. Witnesses should be as a rule two in number provided they be above all suspicion and agree in their testimony. One witness, though he be above all suspicion and in the highest dignity, does not afford full proof. In the cases of solicitation, *e.g.*, the testimony of one witness absolutely by himself does not afford sufficient proof; but investigation is necessary as to character and worthiness of belief. The custom of the Holy Office in such cases is to wait for the third denunciation made by different parties against the same person.

7. The method of taking the deposition of witnesses is treated under the COMMISSION OF INVESTIGATION and PROCEDURE.

8. Witnesses should make their testimony in the presence of those against whom they testify. If they refuse, and there be no valid cause, their testimony becomes at once suspected.

9. Witnesses should be examined on oath (*q.v.*) except in persons of high dignity, whose word is taken as their bond, or when both parties agree to omit the oath.

10. The witnesses as a rule are to be examined by the judge, and their testimony taken down, then read over to them, and if correct signed.

11. The method is from generals to particulars. Leading questions are not allowed. Facts, clear, definite, and certain, are wanted.

12. Witnesses can be subjected to cross-examination, for this is absolutely necessary for establishing the truth. It is generally better that examination should be conducted by one and cross-examination by another. Though the canon law, following the Roman law, says that the witnesses should be examined by the judge himself, yet there is nothing against the practice of allowing the examination to be conducted under the supervision of the judge by those who are employed for the plaintiff or the defendant, the prosecution or the accused. Such a method is more adapted to the course of justice to which English-speaking persons are accustomed. The supervision of the judge secures his canonical right of questioning, and *qui facit per alium facit per se*.

## WOMEN

1. Women are not capable of orders.

2. But they can have some power of jurisdiction. Hence an abbeſs can confer parishes and nominate and institute as parish priests those whom the ordinary approves as fit for the cure of souls.

S.C.C.  
17 Dec.  
1701



3. For a just cause such an one can deprive clerics of their benefices, but she cannot suspend, interdict, or excommunicate.

*Cf.* 1 Cor.  
xiv. 34

4. She cannot teach in the church, however holy or learned.

5. An abbess or prioress cannot bless publicly, but she can bestow her blessing upon her subjects in the way in which parents bless their children.

6. Women can exercise the rights of patronage.

7. They cannot serve at the altar.

Pius X.  
*Motu  
proprio*,  
22 Nov.  
1903

8. 'On the same principle, it follows that singers in church have a real liturgical office, and that therefore women, as being incapable of exercising such office, cannot be admitted to form part of the choir or of the musical chapel.'

9. The Fourth Westminster Council decreed :

(1) 'Women should not live in a priest's house without leave of the ordinary. Schoolmistresses also and pupil-teachers should be strictly forbidden ever to live in any presbytery with the priest, unless for some reason known to the bishop and approved by him in writing; for these, being by their intelligence and education more refined, are more exposed to the tongues of calumniators.

(2) 'But the women who act as servants in presbyteries should be of advanced age, well known for their modesty, prudence, and irreproachable lives, so that the prescriptions of the canons may be kept.

xi. 3

(3) 'And therefore priests should beware of certain women who, by their domineering ways, their contempt for Christ's poor, and their mischief-making spirit, become real plagues in a mission.'

## WORDS

1. The true meaning of words is part of the interpretation of law, and canonists have given the following rules :

(1) Words are to be taken in their proper meaning and according to the common sense of men.

(2) Words are to be taken according to the mind and intention of the sayer.

(3) Special words do more than general words.

(4) Doubtful words are to be interpreted against the sayer.

(5) Words ought to be understood with an effect or as meant for something; they should not be superfluous.

(6) In doubt, that meaning is to be preferred which does not derogate from the rights of a third person.

(7) In all disposition words are to be put with agreement with other words, or are so to be explained that contradiction or correction of the law be excluded.

2. Words taken as directions are of various kinds :

- (1) Affirmative or negative.
- (2) Singular, particular, definite, or general, universal, indefinite.
- (3) Dispositive, or enunciative, or narrative.
- (4) Proper, usual, abusive (wrongly used), civil, juridical.



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*N.B.*—(1) *This does not profess to be a complete bibliography of Canon Law, but of the works mostly consulted in preparing this book. It will also be useful as giving a list of some of the best standard authors. The dates given show the edition used.*

(2) *Those works marked with an asterisk are on the Index of Prohibited Books, and must therefore be used with the necessary caution and permission.*

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